

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

BEFORE HONORABLE JEFFREY T. MILLER, JUDGE PRESIDING

_____)	CASE NO. 10CR4246-JM
UNITED STATES OF AMERICA,)	
PLAINTIFF.)	SAN DIEGO, CALIFORNIA
)	
)	MONDAY, NOVEMBER 18, 2013
)	9:30 A.M. CALENDAR
BASAALY SAEED MOALIN,)	
MOHAMED MOHAMED MOHAMUD,)	
ISSA DOREH,)	
DEFENDANTS.)	
_____)	

REPORTER'S TRANSCRIPT OF PROCEEDINGS

SENTENCING HEARINGS

REPORTED BY:

LEE ANN PENCE,
OFFICIAL COURT REPORTER
UNITED STATES COURTHOUSE
333 WEST BROADWAY ROOM 1393
SAN DIEGO, CALIFORNIA 92101

COUNSEL APPEARING:

FOR PLAINTIFF:

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UNITED STATES ATTORNEY
BY: WILLIAM P. COLE
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FOR DEFENDANTS:
(MR. MOALIN)

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ALICE FONTIER, ESQ.
OFFICE OF JOSHUA L. DRATEL
2 WALL STREET, THIRD FLOOR
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(MR. MOHAMUD)

LINDA MORENO, ESQ.
LINDA MORENO, P.A.
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(MR. DOREH)

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1 SAN DIEGO, CALIFORNIA - MONDAY, NOVEMBER 18, 2013 - 9:30 A.M.

2 * * *

3 **THE CLERK:** CALLING MATTER 1 ON CALENDAR, 10CR4246,
4 U.S.A. VERSUS BASAALY SAEED MOALIN, MOHAMED MOHAMED MOHAMUD,
5 ISSA DOREH; SET FOR SENTENCE WITH PRESENTENCE REPORT.

6 **THE COURT:** COUNSEL, WOULD YOU STATE YOUR
7 APPEARANCES, PLEASE.

8 **MR. COLE:** YES, YOUR HONOR. WILLIAM COLE AND
9 CAROLYN HAN FOR THE UNITED STATES.

10 **MR. DRATEL:** GOOD MORNING, YOUR HONOR. JOSHUA
11 DRATEL FOR BASAALY MOALIN. WITH ME IS ALICE FONTIER.

12 **MS. FONTIER:** GOOD MORNING, YOUR HONOR.

13 **THE COURT:** GOOD MORNING.

14 **MS. MORENO:** GOOD MORNING, YOUR HONOR. LINDA MORENO
15 ON BEHALF OF MR. MOHAMED MOHAMED MOHAMUD, WHO IS PRESENT IN
16 CUSTODY.

17 **MR. GHAPPOUR:** GOOD MORNING, YOUR HONOR. AHMED
18 GHAPPOUR ON BEHALF OF MR. ISSA DOREH, WHO IS PRESENT IN
19 CUSTODY.

20 **THE COURT:** ALL RIGHT. GOOD MORNING AGAIN,
21 EVERYONE.

22 I HAVE REQUESTED THE FILING OF AMENDMENT TO THE
23 ORDER DENYING MOTION FOR A NEW TRIAL. IT IS MY UNDERSTANDING
24 IT HAS BEEN FILED. AND IT BASICALLY CORRECTS ONE MISSTATEMENT
25 THAT WAS CONTAINED IN THE ORIGINAL ORDER DENYING A MOTION FOR

NOVEMBER 18, 2013

1 NEW TRIAL AT PAGE 7 LINES 15 TO 16. THAT IS NOT MATERIAL,
2 OBVIOUSLY, TO ANY SENTENCING MATTERS THIS MORNING.

3 MR. DRATEL, ARE YOU READY TO PROCEED ON BEHALF OF
4 MR. MOALIN?

5 **MR. DRATEL:** YES, WE ARE, YOUR HONOR. JUST ONE
6 THING IS THAT I GAVE THE COURT DEPUTY -- AND I GAVE A COPY TO
7 THE GOVERNMENT AS WELL -- A LETTER.

8 **THE COURT:** YES, I HAVE IT.

9 **MR. DRATEL:** THANK YOU, YOUR HONOR.

10 **THE COURT:** JUST FOR THE RECORD LET'S IDENTIFY THIS
11 AS A LETTER THAT IS DATED APPARENTLY JULY 6 OF 2011. IS THAT
12 CORRECT?

13 **MR. DRATEL:** CORRECT.

14 **THE COURT:** SO THIS IS OVER TWO YEARS OLD.

15 BUT IT IS A LETTER PRESUMABLY TO YOU, MR. DRATEL,
16 FROM VARIOUS LISTED SOMALI PARLIAMENTARIANS, INTELLECTUALS AND
17 TRADITIONAL LEADERS. IT IS A LETTER OF SUPPORT FOR
18 MR. MOALIN, AND I HAVE READ IT ALONG WITH ALL OF THE OTHER
19 LETTERS.

20 **MR. DRATEL:** YES, YOUR HONOR. AND BECAUSE IT CAME
21 SO LONG AGO, BEFORE TRIAL, WE OVERLOOKED IT IN OUR SENTENCING
22 SUBMISSION WHEN WE COLLECTED LETTERS AFTER THE VERDICT.

23 **THE COURT:** UNDERSTOOD.

24 **MR. DRATEL:** WE REALIZED, AND MR. MOALIN BROUGHT IT
25 TO OUR ATTENTION AS WELL.

1 **THE COURT:** THANK YOU.

2 **MR. DRATEL:** TO SUPPLEMENT THAT.

3 **THE COURT:** THANK YOU FOR THE EXPLANATION.

4 YOU ARE READY TO PROCEED, THEN, MR. DRATEL?

5 **MR. DRATEL:** I AM, YOUR HONOR.

6 **THE COURT:** MR. MOALIN, ARE YOU READY TO PROCEED

7 WITH SENTENCING THIS MORNING?

8 **DEFENDANT MOALIN:** YES, YOUR HONOR.

9 **THE COURT:** SIR, HAVE YOU READ THE PROBATION REPORT
10 AND THE ADDENDUM TO THE PROBATION REPORT, OR HAVE THEY BEEN
11 READ TO YOU?

12 **DEFENDANT MOALIN:** YES, YOUR HONOR, I READ THEM.

13 **THE COURT:** YOU READ THEM YOURSELF?

14 **DEFENDANT MOALIN:** YES.

15 **THE COURT:** IN ENGLISH?

16 **DEFENDANT MOALIN:** YES.

17 **THE COURT:** VERY GOOD. THANK YOU, MR. MOALIN. YOU
18 MAY CERTAINLY BE SEATED. THANK YOU.

19 MR. DRATEL, PLEASE.

20 **MR. DRATEL:** THANK YOU, YOUR HONOR.

21 YOUR HONOR, JUST AS A -- JUST FOR PURPOSES -- NOT TO
22 TRY TO GO BACK TOO MUCH BUT IN TERMS OF THE GOVERNMENT FILED
23 SOMETHING EX PARTE ON FRIDAY, WE WOULD CONTINUE OUR OBJECTION
24 TO EX PARTE FILINGS. NOT HAVING TO DO WITH SENTENCING, I
25 THINK IT HAD TO DO WITH THE COURT'S ORDER.

1 **THE COURT:** RIGHT.

2 **MR. DRATEL:** OKAY.

3 SO TO START WITH THE STANDARD, BECAUSE THAT WILL BE
4 THE CONTEXT FOR MY REMARKS, WHICH IS THE PARSIMONY CLAUSE,
5 SUFFICIENT BUT NOT GREATER THAN NECESSARY TO ACHIEVE THE
6 PURPOSES OF SENTENCING.

7 AND I DON'T WANT ANYTHING I SAY TODAY, OR MS.
8 FONTIER OR MR. MOALIN SAYS TODAY, TO BE CONSTRUED AS
9 CHALLENGING THE VERDICTS BECAUSE WE ARE NOT DOING THAT. WE
10 ARE TALKING ABOUT PROPORTIONALITY AND WHERE ALONG THE
11 CONTINUUM CONDUCT FALLS, AND A BALANCE BETWEEN THE CONDUCT FOR
12 WHICH MR. MOALIN HAS BEEN CONVICTED AND THE REST OF HIS LIFE,
13 AND HIS FUTURE, FOR THAT MATTER, AS WELL. SO THAT'S THE
14 CONTEXT IN WHICH WE TALK ABOUT WHAT WE ARE GOING TO TALK ABOUT
15 TODAY.

16 AND THE COURT, I KNOW -- I AM NOT GOING TO GO
17 THROUGH THE SENTENCING SUBMISSION BECAUSE I KNOW THE COURT HAS
18 READ IT. BUT JUST TO NOTE THE TESTAMENTS TO THE GOOD WORKS
19 THAT MR. MOALIN HAS DONE THROUGH HIS LIFE FOR THE PEOPLE OF
20 SOMALIA, FOR THE SOMALIS AND HIS COMMUNITY IN SAN DIEGO. THE
21 EXTRAORDINARY NUMBER OF LETTERS AND SIGNATORIES.

22 WE TRIED TO DO A COUNT, IT IS KIND OF DIFFICULT
23 BECAUSE SOME PEOPLE ARE JUST SIGNATURES, THERE ARE SOME
24 LETTERS, BUT WE ARE TALKING ABOUT OVER 600 PEOPLE FROM HERE
25 AND IN SOMALIA. THERE COULD HAVE BEEN EVEN MORE, BUT

1 LIMITATIONS ON LANGUAGE AND JUST LOGISTICS PRECLUDED THAT.
2 BUT I THINK 600-PLUS IS A SUFFICIENT NUMBER TO GIVE THE COURT
3 A SENSE OF WHO MR. MOALIN IS AND WHAT PEOPLE THINK OF THE WORK
4 THAT HE HAS DONE IN HIS LIFE.

5 THERE IS ALSO A LETTER FROM GOVERNMENT MINISTERS IN
6 2011 THAT WE JUST PROVIDED TO THE COURT, AND THIS IS TANGIBLE
7 ASSISTANCE TO PEOPLE IN NEED. THE PAYING FOR SCHOOLING, THE
8 PAYING FOR THE CARE OF ORPHANS, ALL OF THAT TANGIBLE
9 ASSISTANCE. AND NOT ASSISTANCE THAT IS CERTAINLY NOT
10 CONTRIVED IN THE CONTEXT OF A CRIMINAL CASE, WHICH SOMETIMES
11 YOU SEE CHARITABLE WORKS BEING A RESPONSE TO SOME SORT OF
12 POTENTIAL EXPOSURE. BUT THIS IS REALLY WHO MR. MOALIN IS.

13 AND WE ASK THE COURT TO BALANCE THE RELATIVELY BRIEF
14 EPISODE OF CRIMINAL CONDUCT AGAINST THIS ENTIRE BODY OF HIS
15 LIFE'S WORK.

16 AND HOW DO WE KNOW THAT IT IS RELATIVELY BRIEF? WE
17 KNOW FROM ACTUALLY -- AS OPPOSED TO OTHER CASES WHERE YOU MAY
18 NOT HAVE A SENSE OF IT, WE ACTUALLY DO KNOW HERE BECAUSE WE
19 KNOW THAT IN 2003 THE GOVERNMENT INVESTIGATED MR. MOALIN AND
20 FOUND NO CONNECTION TO TERRORISM.

21 AND WE KNOW THAT BETWEEN 2008 AND 2010, THE TIME
22 PERIOD FROM WHEN THE CRIMINAL CONDUCT ENDS AND THE INDICTMENT,
23 THERE IS NO EVIDENCE OF ANY CRIMINAL CONDUCT BY MR. MOALIN OF
24 ANY SORT, EVEN THOUGH HE WAS QUITE CLEARLY ON THE GOVERNMENT'S
25 RADAR DURING THAT ENTIRE PERIOD.

1 IN FACT, AFTER AUGUST OF 2008 THERE IS NOTHING, EVEN
2 THOUGH THE WIRE CONTINUE AFTER THAT. AND THE SIGNIFICANCE OF
3 2008, AUGUST, IS THE ASMARA AGREEMENT THAT NEGOTIATED THE END
4 OF ETHIOPIAN INTERVENTION IN SOMALIA AND NEGOTIATED NEW
5 ELECTIONS IN SOMALIA.

6 I KNOW THAT THE COURT HAS THE TRANSCRIPT FROM THE
7 NIMA YUSUF CASE THAT HAS BEEN PROVIDED BY OTHER COUNSEL. AND
8 THE COURT IN THAT SENTENCING I THINK WAS CORRECTLY -- AND WE
9 RAISED THIS ISSUE OURSELVES, CORRECTLY CONCERNED WITH THE SORT
10 OF ONE-SIZE-FITS-ALL CONCEPT OF THE ENHANCEMENTS AND HOW THEY
11 AREN'T NECESSARILY TIED TO A SPECIFIC EMPIRICAL SET OF DATA
12 BUT REALLY JUST A POINT IN SPACE ARBITRARILY PICKED FOR
13 PURPOSES OF THE ENHANCEMENT. AND THAT THE WORSE OFFENDER,
14 SOMEONE WHO PROVIDED MILLIONS OF DOLLARS FOR SPECIFIC
15 TERRORIST ACTIVITY, WOULD BE NO DIFFERENT THAN THE PERSON WHO
16 PROVIDED A SMALL AMOUNT OF MONEY AND NOT DIRECTED TO TERRORIST
17 ACTIVITY.

18 SO I THINK THAT IS AN IMPORTANT ASPECT. AND I THINK
19 THAT NOT MAKING THOSE DISTINCTIONS AMONG DEFENDANTS AMONG
20 TYPES OF CONDUCT UNDERMINES SENTENCING AND THE INTEGRITY OF
21 THE ENTIRE SYSTEM OF SENTENCING IN THE SENSE OF
22 INDIVIDUALIZING SENTENCING AND HAVING THE SENTENCE FIT THE
23 OFFENDER AND THE CONDUCT TOGETHER; AGAIN, THE BALANCE OF A
24 LIFE'S WORK AND THE NATURE OF THE CONDUCT.

25 THERE IS NOTHING IN THIS CASE THAT SUGGESTS, OR

1 CERTAINLY PROVES, ANY ENDURING OR PERSISTENT SUPPORT BY
2 MR. MOALIN FOR AL-SHABAAB. IN FACT, ALL OF THE LETTERS THE
3 COURT HAS SEEN SAY OTHERWISE.

4 THERE WAS SOME POST 2008 CONDUCT THAT WAS NOT
5 ADMITTED AT TRIAL BECAUSE WE WERE CONFINED TO THE TIME FRAME,
6 BUT IT IS CERTAINLY RELEVANT FOR SENTENCING IN THAT ONE OF THE
7 THINGS, THAT MR. MOALIN WAS PUT ON AL-SHABAAB HIT LIST FOR THE
8 CONFERENCE THAT HE ORGANIZED IN KENYA WITH ONE OF THE
9 WITNESSES AT TRIAL, HALIMA ALI. AND THAT IS SOMETHING THAT IS
10 KNOWN IN THE COMMUNITY IN SOMALIA. AND THIS IS SOMEONE WHO IS
11 CHARACTERIZED BY AL-SHABAAB AS AN ENEMY. SO I -- IN THAT
12 CONTEXT I THINK THAT, AGAIN, GOES TO THE QUESTION OF BALANCE
13 AND THE QUESTION OF WHAT IS AN APPROPRIATE SENTENCE AND THE
14 NATURE OF THE CONDUCT AND THE NATURE OF THE PERSON.

15 ALSO ABDISALAM GULED TESTIFIED, AND AGAIN THIS WAS
16 NOT WITHIN THE TIME FRAME OF THE TRIAL SO -- BUT HE CAME TO
17 SAN DIEGO IN 2009 AS PART OF HIS OFFICIAL TRIP. AND THE ONE
18 PERSON HE WANTED TO MEET HERE -- AND THIS IS A PERSON WHO IS
19 NATIONAL SECURITY ADVISER TO THE PRESIDENT OF SOMALIA. THE
20 ONE PERSON HE WANTED TO MEET IN SAN DIEGO WAS BASAALY MOALIN,
21 BECAUSE OF WHAT BASAALY MOALIN HAD DONE FOR SOMALIS. THIS IS
22 A GOVERNMENT OFFICIAL.

23 SO WHILE MR. MOALIN IS CONVICTED OF PROVIDING AID TO
24 A TERRORIST ORGANIZATION, HE IS NEITHER A TERRORIST NOR A
25 TERRORISM SUPPORTER. I THINK THAT IS CLEAR FROM THE ENTIRE

1 RECORD AND ENTIRE NATURE OF HIS LIFE'S WORK. AND I THINK THAT
2 IS CRITICAL IN THE CONTEXT OF SENTENCING.

3 AND THE CONTEXT OF THE CONDUCT WE HAVE PROVIDED,
4 OBVIOUSLY -- AND THE COURT IS FAMILIAR. YOU HEARD FROM
5 MR. BRYDEN AND ALL OF THE OTHER SUBMISSIONS. THERE IS A
6 CRISIS IN SOMALIA. THERE IS A CONTINUING CRISIS IN SOMALIA.
7 THERE HAS BEEN A TWO-DECADE CRISIS IN SOMALIA -- NOW MORE THAN
8 TWO DECADES. AND THERE WERE JUDGMENTS MADE IN THE COURSE OF
9 THAT. AND I AM NOT HERE TO SAY THAT THE JUDGMENT THAT THE
10 JURY FOUND IT WAS LEGAL, BUT I AM SAYING THAT THE JUDGMENT WAS
11 A JUDGMENT, A QUESTION AND NOT A QUESTION OF SOMEONE'S
12 ORIENTATION AS A WHOLE. AND WE HAVE VERY COMPLICATED
13 GEOPOLITICAL ISSUES THAT OCCUR IN TODAY'S WORLD THAT ARE
14 EXTRAORDINARILY DIFFICULT TO NAVIGATE.

15 JUST GIVE YOU AN EXAMPLE. IN SYRIA THE UNITED
16 STATES HAS TAKEN THE POSITION THAT WE ARE GOING TO AID CERTAIN
17 INSURGENT GROUPS. WE DON'T KNOW WHAT THE FULL NATURE OF THOSE
18 GROUPS ARE, JUST THAT THEY ARE AGAINST THE GOVERNMENT. AND
19 THAT IS GOING TO BE ENOUGH FOR US TO GIVE THEM MATERIAL
20 MILITARY AID. THEY MAY INCLUDE ELEMENTS THAT ARE AL QAEDA
21 PEOPLE. BUT WE HAVE DECIDED THAT THAT IS IN THE NATIONAL
22 INTEREST TO DO SO.

23 AGAIN, MR. MOALIN, THE JURY FOUND, NOT LEGAL BUT HAS
24 TO BE PUT IN A CONTEXT OF THE SITUATION THAT WAS OCCURRING.

25 AND ANOTHER THING ABOUT THE CHARGES AND ABOUT THE

1 CONDUCT IS THERE IS NOTHING AGAINST THE UNITED STATES IN THE
2 CONDUCT AND THE CHARGES, AND MR. MOALIN WILL SPEAK MORE TO
3 THAT HIMSELF.

4 I KNOW THAT GENERAL DETERRENCE IS AN ASPECT OF
5 SENTENCING, AND I KNOW THAT THE GOVERNMENT HAS CITED IT AS A
6 BASIS FOR ITS RECOMMENDATION. BUT CERTAINLY ALL OF THE OTHER
7 SENTENCES -- AND TWO IN PARTICULAR, THE NIMA YUSUF SENTENCE
8 AND THE MOHAMED YUSUF SENTENCE IN ST. LOUIS -- CERTAINLY
9 INCLUDED GENERAL DETERRENCE AS A COMPONENT. THE JUDGE, IN
10 EITHER CASE, I DON'T THINK IGNORED GENERAL DETERRENCE. YET
11 ONE GAVE NIMA YUSUF EIGHT YEARS FOR MONEY TO SOMEONE WHO WAS A
12 SUICIDE BOMBER, AFTER YUSUF SOMEONE WHO -- 140 MONTHS, SOMEONE
13 WHOSE ROLE WAS COMMENSURATE WITH MR. MOALIN'S, JUST IN A
14 DIFFERENT CITY. AND THOSE DON'T APPROACH THE NUMBER SUGGESTED
15 BY THE GOVERNMENT. SO GENERAL DETERRENCE WAS PART OF THOSE
16 SENTENCES AS WELL.

17 ANOTHER ASPECT -- I ALSO -- EVEN IF IT WASN'T THERE
18 IS NO REASON WHY MR. MOALIN SHOULD, BY HIMSELF, SHOULDER THE
19 BURDEN OF GENERAL DETERRENCE IN A MANNER THAT OTHERS HAVEN'T.
20 HE IS A HUMAN BEING. WE ARE SENTENCING HUMAN BEINGS AND NOT
21 PHANTOM DEFENDANTS WHO HAVEN'T EVEN COMMITTED CRIMES YET IN
22 TERMS OF WHAT WAS GOING TO INFLUENCE THEM. GOING TO HAVE A
23 TANGIBLE IMPACT ON MR. MOALIN AND HIS FAMILY. I WOULD ASK THE
24 COURT TO CONSIDER THAT IN THAT CONTEXT.

25 ALSO, NIMA YUSUF AND MOHAMUD YUSUF -- NOT RELATED, I

1 DON'T BELIEVE -- BUT IN CHICAGO -- I MEAN IN ST. LOUIS,
2 RATHER, AND NIMA YUSUF HERE IN SAN DIEGO BOTH PLEADED GUILTY,
3 SO THE GENERAL DETERRENCE FACTOR CAN'T BE THAT IT IS A GENERAL
4 DETERRENCE AGAINST GOING TO TRIAL. AND CAN'T BE AND SHOULDN'T
5 BE AND SHOULDN'T BE VIEWED THAT WAY; IN OTHER WORDS, THAT A
6 SENTENCE IS INCREASED ABOVE THAT BECAUSE THAT WOULD JUST DETER
7 PEOPLE FROM GOING TO TRIAL, WHICH I THINK WOULD BE, OBVIOUSLY,
8 INAPPROPRIATE AND I DON'T THINK THAT WOULD BE THE COURT'S
9 INTENTION. BUT AT THE SAME TIME THAT WOULD BE THE IMPACT IF
10 THAT WOULD BE THE ONLY DISTINCTION THAT PEOPLE WOULD DRAW FROM
11 THAT.

12 I DON'T KNOW THAT THERE IS ANY EMPIRICAL EVIDENCE
13 THAT HAS EVER ESTABLISHED THE EFFICACY OF GENERAL DETERRENCE
14 OR SPECIFIC AMOUNT OR WHO IT INFLUENCES. THERE IS A
15 SUFFICIENT MESSAGE THIS CASE HAS ALREADY SENT TO THE
16 COMMUNITY, AND I THINK THE PROOF IS IN THE FACT THAT YOU
17 HAVEN'T HAD, IN SAN DIEGO, ANYTHING APPROACHING THIS IN FIVE
18 YEARS.

19 AND THE MESSAGE HAS BEEN SENT BY TURNING EVERYBODY'S
20 LIFE UPSIDE DOWN, BY THE CUSTODY THAT THEY HAVE ALREADY HAD
21 AND WHATEVER SENTENCE THE COURT SEES FIT TO IMPOSE IN ADDITION
22 TO THE TIME THEY HAVE ALREADY SERVED. THAT IS SUFFICIENT.
23 NOBODY WANTS TO BE SEPARATED FROM THEIR FAMILY. NO ONE WANTS
24 TO BE IN A POSITION WHERE THEIR FAMILY IS IN NEED THAT ALL OF
25 THE THINGS THAT THEY PROVIDE TO THEM ARE NO LONGER AVAILABLE

1 BECAUSE THEY ARE IN CUSTODY. THAT MESSAGE HAS BEEN HEARD.

2 THERE IS NO EVIDENCE THAT PEOPLE DO THE KIND OF
3 COST-BENEFIT ANALYSIS THAT GENERAL DETERRENCE AS A WHOLE SEEMS
4 TO SUGGEST. BUT JUST AGAIN A COMPARISON -- AND WE PUT THESE
5 CASES IN OUR PAPERS WITH RESPECT TO FINANCIAL INSTITUTIONS AND
6 BANKS THAT HAVE BEEN MULTIPLE OFFENDERS, REPEAT OFFENDERS.
7 THEY DO COST-BENEFIT ANALYSIS. THAT IS THEIR JOB. YET,
8 GENERAL DETERRENCE DOESN'T SEEM TO APPLY TO THEM. THEY DON'T
9 EVEN GET PROSECUTED CRIMINALLY. THEY PAY THE COST OF DOING
10 BUSINESS AND MOVE ON TO THE NEXT SET OF FINANCIAL MALFEASANCE.
11 BUT THIS IS A HUMAN BEING.

12 AND SO I END WHERE I STARTED, WITH THE PARSIMONY
13 CLAUSE, SUFFICIENT BUT NOT GREATER THAN NECESSARY. AND I
14 THINK THAT THE BENCHMARKS HERE ARE NIMA YUSUF AND THE YUSUF IN
15 ST. LOUIS FOR THE COURT THAT THAT WOULD BE -- SOMETHING IN
16 THAT RANGE WOULD BE THE APPROPRIATE SENTENCE FOR MR. MOALIN.

17 I DON'T WANT TO ARGUE AGAINST MYSELF IN CASE THE
18 COURT IS THINKING OF GOING LOWER THAN THAT, OBVIOUSLY, BY ALL
19 MEANS. BUT I UNDERSTAND THAT THERE IS A CERTAIN PROTOCOL
20 HERE, THERE IS A GENERAL SENSE OF RECOMMENDING. SO I AM -- I
21 DON'T COME FROM A DISTRICT WHERE THAT IS DONE ON ANY BASIS.
22 BUT I AM ASKING THE COURT TO CONSIDER ALL OF THESE FACTORS.
23 CONSIDER THE ENTIRE HUMAN BEING, NOT JUST AT HIS WORST MOMENT
24 OF CRIMINAL CONDUCT BUT ALSO HIS BEST MOMENTS WHICH VASTLY
25 OUTWEIGH IT IN TERMS OF TIME, AND I REALLY BELIEVE ALSO IN

1 IMPACT IN SOMALIA. LETTERS FROM PEOPLE WHO WERE GOING TO
2 SCHOOL AND LEARNING AND BETTERING THEIR LIVES AND TURNING
3 AROUND A COUNTRY THAT HAS BEEN UNABLE TO TURN ITSELF AROUND OR
4 BE TURNED AROUND BY INTERNATIONAL INTERVENTION FOR A
5 CONSIDERABLE PERIOD OF TIME.

6 THANK YOU.

7 **THE COURT:** THANK YOU, MR. DRATEL, I APPRECIATE YOUR
8 COMMENTS.

9 **MR. DRATEL:** MS. FONTIER WILL SPEAK A LITTLE BIT
10 ABOUT MR. MOALIN, JUST SPECIFICALLY SOME OF THE PERSONAL
11 MATTERS, YOUR HONOR, IF SHE MAY.

12 **THE COURT:** OKAY.

13 **MS. FONTIER:** YOUR HONOR, I FEEL THAT I AM IN A
14 RATHER DIFFICULT POSITION AT THIS SENTENCING, AND NOT FOR THE
15 USUAL REASONS IN THAT I HAVE TO FIND A WAY TO HUMANIZE MY
16 CLIENT OR TO SAY SOMETHING THAT SEPARATES HIM FROM THIS
17 OFFENSE; BUT RATHER FOR THE EXACT OPPOSITE REASON IN THAT I
18 COULD STAND AT THIS PODIUM FOR THE NEXT THREE HOURS AND TELL
19 YOU THE GREAT THINGS THAT I KNOW ABOUT MR. MOALIN AND THE
20 IMPACT THAT HE HAS HAD ON ME PERSONALLY, THE IMPACT THAT HE
21 HAS HAD ON HIS COMMUNITY HERE IN SAN DIEGO AND IN SOMALIA.

22 WHAT IS DIFFICULT FOR ME IS HOW I AM GOING TO
23 SHORTEN THIS, AND JUST TRY TO IMPRESS UPON YOUR HONOR WHO
24 BASAALY MOHAMED IS, AS A MAN, IN A SHORT PERIOD OF TIME.

25 AND I KNOW YOUR HONOR IS VERY DILIGENT AND HAS READ

1 THE MANY, MANY LETTERS AND OUR NEARLY 70-PAGE SUBMISSION ON
2 BEHALF OF MR. MOALIN, SO I DON'T INTEND TO REPEAT, REALLY, ANY
3 OF WHAT IS IN THAT. I THINK IT SPEAKS FOR ITSELF.

4 I THINK THE FACT THAT THIS COURTROOM IS FULL, AND
5 HAS BEEN FULL EVERY SINGLE DAY THAT WE HAVE COME TO COURT --
6 REGARDLESS OF WHETHER IT WAS FOR AN ADJOURNMENT OR STATUS
7 CONFERENCE. THIS COMMUNITY HAS PACKED THIS COURTROOM, WAS IN
8 OVERFLOW COURTROOMS, EVERY SINGLE TIME THIS CASE HAS BEEN ON.

9 WE HAD A COMMUNITY MEETING WHEN WE FIRST CAME ON TO
10 THIS CASE AND THERE WERE HUNDREDS OF PEOPLE AT THE MOSQUE
11 SEEKING TO GIVE THEIR SUPPORT. SEVERAL PEOPLE ASKED IF THEY
12 COULD -- THIS MORNING ASKED IF THEY WOULD BE ABLE TO SPEAK
13 DIRECTLY TO YOUR HONOR TO SAY HOW THEY FEEL ABOUT MR. MOALIN
14 AND WHAT HE HAS DONE FOR HIM IN THEIR LIVES. AGAIN, MANY OF
15 THOSE PEOPLE HAVE SUBMITTED LETTERS WHICH YOUR HONOR HAS READ.

16 AND MOST -- MR. MOALIN'S MOTHER IS HERE.
17 MR. MOALIN'S MOTHER IS HERE. SHE HAS BEEN HERE THROUGHOUT THE
18 TRIAL DESPITE THE FACT SHE DOES NOT SPEAK ENGLISH, SO SHE IS
19 HERE TRULY JUST TO SHOW HER SUPPORT AND TO BE HERE FOR HER
20 SON. SHE WAS ACTUALLY HOPING TO BE ABLE TO SPEAK THIS MORNING
21 AS WELL.

22 SHE IS OBVIOUSLY ELDERLY. SHE IS DISABLED.
23 MR. MOALIN CARED FOR HER, BOTH FINANCIALLY, EMOTIONALLY, IN
24 EVERY WAY THAT A SON COULD BEFORE HE WAS ARRESTED. OBVIOUSLY,
25 HE IS VERY CLOSE TO HER, HE IS CLOSE TO THE REST OF HIS

1 FAMILY.

2 THIS COMMUNITY HAS SUFFERED BECAUSE OF HIS
3 INCARCERATION. IT IS NOT ONLY MR. MOALIN WHO IS PAYING THE
4 PRICE FOR THIS CASE, IT IS AN ENTIRE COMMUNITY.

5 AND, YOUR HONOR, I THINK, AS I HAVE BEEN PONDERING
6 THIS OVER THE LAST FEW DAYS AND WHAT I WOULD SAY, WHAT
7 OCCURRED TO ME IS WHAT REALLY SYMBOLIZES THE IMPACT THAT
8 MR. MOALIN HAS IS THE TRIP THAT MYSELF AND MR. GHAPPOUR TOOK
9 TO SOMALIA.

10 YOUR HONOR, THAT COUNTRY IS OUT OF THE REALM OF
11 UNDERSTANDING FOR YOUR AVERAGE AMERICAN. CERTAINLY, EVEN
12 HAVING EDUCATED MYSELF ON THE HISTORY AND THE CONDITIONS AND
13 HAVING SOME SENSE OF WHAT TO EXPECT WHEN I ARRIVED THERE, IT
14 BLEW MY MIND. IT IS NOT COMPARABLE TO THIS COUNTRY. IT IS
15 NOT COMPARABLE TO ANY OTHER COUNTRY THAT I HAVE EVER BEEN TO,
16 INCLUDING MANY OTHER THIRD WORLD DEVELOPING NATIONS, POOR
17 NATIONS. IT STANDS APART BECAUSE OF THE TURMOIL, THE STRIFE,
18 THE WARS THAT HAVE TAKEN SUCH A TOLL. AND THE FAMINE, THE
19 DROUGHT. PEOPLE ARE -- PEOPLE DON'T LIVE IN SOMALIA, PEOPLE
20 TRY TO SURVIVE.

21 AND MR. MOALIN KNOWS THAT BECAUSE HE GREW UP THERE.
22 HE WAS A VICTIM OF THE BEGINNING OF THE WAR. HE WAS SHOT AND
23 LEFT FOR DEAD. AND GOT TO THIS COUNTRY AS A REFUGEE, ASYLUM
24 SEEKER, AND EARNED HIS CITIZENSHIP AND MADE THE MOST OF THAT.

25 HE HAS BEEN DILIGENTLY EMPLOYED FOR HIS ENTIRE LIFE.

1 AND WORKING AS A TAXI DRIVER HAS MANAGED TO SET ASIDE ENOUGH
2 MONEY THAT HE COULD SUPPORT, FROM HIS WORK, HIS FAMILY IN
3 SOMALIA -- WHICH MR. MOALIN IS GOING TO SPEAK ABOUT HIS FAMILY
4 SO I AM NOT GOING TO GO INTO THAT.

5 BUT IN ADDITION TO THAT, STUDENTS, ORPHANS,
6 PEOPLE -- HE HAS PERSONALLY, FROM HIS OWN MONEY, SUPPORTED --
7 AT THE TIME OF HIS ARREST WAS SUPPORTING 45 STUDENTS. AND
8 THERE ARE AT LEAST 100 LETTERS THAT WERE SUBMITTED OF PEOPLE
9 THAT HE HELPED GO TO SCHOOL TO OBTAIN THEIR EDUCATION, BECAUSE
10 THAT IS WHAT HE VALUES AND WHAT IS IMPORTANT TO HIM.

11 AND YOU HEARD FROM HALIMA IBRAHIM, WHO IS COMMONLY
12 KNOWN AS HALIMA ALI, HERE AT TRIAL. SHE FLEW TO THE UNITED
13 STATES FROM SOMALIA IN ORDER TO GIVE HER SUPPORT TO MR. MOALIN
14 AND TO SAY: I HAD A SCHOOL FOR GIRLS AND MR. MOALIN SUPPORTED
15 ME UNCONDITIONALLY AND FINANCIALLY.

16 SUPPORTING THE EDUCATION OF GIRLS IN SOMALIA IS
17 ANTITHETICAL TO THE BELIEFS, THE IDEOLOGY OF AL-SHABAAB, BUT
18 THAT IS WHO MR. MOALIN IS. HE IS A PERSON THAT SUPPORTS
19 TOLERANCE, EDUCATION, FREEDOMS. AND HE DEDICATED HIS LIFE TO
20 HELPING PEOPLE THAT COULDN'T HAVE THE GREAT OPPORTUNITY THAT
21 MR. MOALIN HAD TO COME TO THE UNITED STATES. HE LIVED VERY
22 SIMPLY HERE IN THE UNITED STATES, SHARING A HOME WITH HIS
23 FAMILY MEMBERS, COUSINS, IN ORDER TO BE ABLE TO TAKE ANY
24 ADDITIONAL MONEY THAT HE HAD AND SUPPORT PEOPLE THAT COULDN'T
25 SURVIVE WITHOUT HIS HELP. THAT IS THE MAN THAT IS BEFORE YOU,

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1 YOUR HONOR.

2 NOW, WHEN WE WENT TO SOMALIA WE WENT TO THE AIRPORT
3 AND WE WENT TO A SECURE FACILITY NEXT TO IT BECAUSE THAT WAS
4 ALL THAT WAS DEEMED SAFE ENOUGH FOR US. AND WHEN ANYONE THAT
5 WORKED IN THOSE FACILITIES WOULD LEAVE THEY LEFT IN AN ARMORED
6 TRUCK. IT IS THE KIND OF SITUATION THAT MOGADISHU WAS AT THE
7 TIME WHEN WE WERE THERE.

8 AND, YOUR HONOR, JUST TO GET INTO THE AIRPORT FROM
9 OUTSIDE OF IT, OUT IN MOGADISHU PROPER, THERE ARE FIVE
10 CHECKPOINTS WITH ARMED GUARDS AND GATES. YOU HAVE TO GO
11 THROUGH THAT JUST TO GET INTO THE AIRPORT. TO GET TO
12 MOGADISHU FROM GALGUDUUD, FROM THESE CENTRAL REGIONS, YOU
13 CANNOT COME BY ROAD BECAUSE IT WASN'T SAFE ENOUGH. THERE ARE
14 MINES, THERE ARE CHECKPOINTS RUN BY MILITIAS. PEOPLE THAT
15 CAME TO SPEAK TO US HAD TO USE THEIR OWN MONEY AND GET ON A
16 FLIGHT WHICH ARE -- FOR LACK OF RESOURCES ARE INHERENTLY
17 UNSAFE. THEY HAVE A TERRIBLE RECORD OF CRASHING BUT THEY ALSO
18 CAN BE SHOT DOWN. AND PEOPLE -- MANY, MANY PEOPLE CAME TO
19 SPEAK TO US. THE DEPOSITIONS THAT YOU SAW HERE WERE JUST A
20 SMALL PORTION OF THE PEOPLE THAT WANTED TO MEET WITH US, AND
21 THAT DID MEET WITH US, IN ORDER TO SAY: MR. MOALIN HAS HELPED
22 US, LET US NOW HELP HIM.

23 YOUR HONOR, THE PEOPLE THAT CAME TO US WERE MEMBERS
24 OF AHLU SUNA WAA JAMAA, WHICH AS YOU HEARD AT TRIAL AND HAS
25 BEEN SUBMITTED TO YOU, AND MR. BRYDEN TESTIFIED TO, IS A GROUP

1 THAT IS VERY WELL-KNOWN FOR THEIR OPPOSITION TO AL-SHABAAB.

2 GOVERNORS FROM THOSE PROVINCES THAT ARE AHLU SUNA
3 MEMBERS CAME TO SAY MR. MOALIN SUPPORTS US.

4 ABUKAR MOHAMMED WAS THE MINISTER OF EDUCATION UNDER
5 SHEIK SHARIF. HE WAS A KEY MEMBER OF THE GOVERNMENT THAT IS
6 DESPERATELY TRYING TO FORM SOME SORT OF STABILITY IN THAT
7 COUNTRY. HE CAME TO SAY: MR. MOALIN SUPPORTED ME, HAS ALWAYS
8 SUPPORTED ME.

9 FARAH YARE WHO -- FARAH SHIDANE, ALSO, IS HIS FORMAL
10 NAME. LEADER OF THE DROUGHT COMMISSION. HE WAS HERE -- OR HE
11 CAME TO US TO TESTIFY ON BEHALF OF MR. MOALIN.

12 AND, YOUR HONOR, THESE PEOPLE THAT ARE MR. MOALIN'S
13 PEOPLE, THAT HE SUPPORTED AND THAT SUPPORT HIM, HAVE BEEN
14 WORKING DILIGENTLY IN THAT COUNTRY TO MAKE IT BETTER, TO THE
15 POINT WHERE SINCE THE TIME OF TRIAL, FARAH YARE HAS BEEN
16 KILLED. HE WAS IN THE STREET IN MOGADISHU AND HE WAS GUNNED
17 DOWN BY AL-SHABAAB. BECAUSE OF THAT INCIDENT AND AL-SHABAAB
18 FORCING THEIR WAY BACK INTO MOGADISHU, ABUKAR MOHAMMED IS NO
19 LONGER WORKING WITH THE GOVERNMENT, HE HAS HAD TO FLEE TO
20 HOLLAND.

21 THESE ARE ONGOING PROBLEMS, AND THE PEOPLE THAT MR.
22 MOALIN SUPPORTED ARE THE PEOPLE THAT ARE DESPERATELY TRYING,
23 GIVING THEIR LIVES TO TRY TO MAKE SOMALIA A BETTER COUNTRY.

24 AND THE FACT THAT THEY WENT THROUGH SO MUCH TO COME
25 AND SUPPORT HIM SPEAKS MORE THAN ANYTHING THAT I CAN SAY OR

1 ANYTHING THAT ANYONE CAN SAY TO THE FACT OF WHO THIS MAN IS.

2 AND, YOUR HONOR, AGAIN, I AM NOT GOING TO GO ON FOR
3 MUCH LONGER. I THINK THAT THE PAPERS ARE CLEAR. THE SUPPORT
4 IS OBVIOUS.

5 BUT I WILL SAY, YOUR HONOR, THAT I MAY NOT HAVE THE
6 EXPERIENCE OF SOME OF MY COLLEAGUES OR THIS COURT, BUT IN THE
7 LAST 10 YEARS OF PRACTICING I HAVE PROBABLY STOOD UP NEXT TO
8 AT LEAST 1,000 PEOPLE AND SAID SOMETHING AT SENTENCING, SAID
9 SOMETHING ON THEIR BEHALF. BUT I HAVE NEVER BEEN MORE PROUD
10 TO SAY THAT I AM SPEAKING ON BEHALF OF SOMEONE. I AM SO PROUD
11 AND SO HONORED TO HAVE HAD THE OPPORTUNITY TO SPEAK ON BEHALF
12 OF BASAALY MOALIN. HE IS A REMARKABLE HUMAN BEING.

13 AND I DO ASK THAT YOUR HONOR CONSIDER NOT JUST HIS
14 CONVICTION, BUT THIS MAN, WHO THIS MAN IS, WHAT HE HAS DONE
15 FOR COUNTLESS PEOPLE. HE HAS LITERALLY BEEN RESPONSIBLE FOR
16 THE SURVIVAL OF NUMEROUS MANY, MANY PEOPLE IN SOMALIA, AND HE
17 MEANS THE WORLD TO THIS COMMUNITY. AND I ASK YOU TO CONSIDER
18 THAT, YOUR HONOR.

19 **THE COURT:** THANK YOU, MS. FONTIER.

20 MR. MOALIN, YOU DO HAVE AN OPPORTUNITY TO MAKE ANY
21 STATEMENT YOU WISH TO MAKE AT THIS TIME.

22 **MS. FONTIER:** DO YOU WANT HIM AT THE PODIUM?

23 **THE COURT:** HE CAN SIT RIGHT THERE. JUST PULL A
24 MICROPHONE UP.

25 MAKE YOURSELF COMFORTABLE, MR. MOALIN. YOU CAN

1 STAND OR YOU CAN BE SEATED, EITHER WAY. PLEASE BE SEATED IF
2 IT IS MORE COMFORTABLE FOR YOU.

3 **DEFENDANT MOALIN:** THANK YOU, YOUR HONOR.

4 FIRST, BEFORE I SAY ANYTHING, I WOULD LIKE TO SAY
5 THANKS BY GOD WHO GIVES TO ME THIS OPPORTUNITY TO TALK TO YOU.

6 THE SECOND I WOULD LIKE TO THANK YOU, YOUR HONOR, TO
7 BE MY JUDGE. AND I WOULD THANKS ALSO MY LAWYERS, DATEL AND
8 ALICE FONTIER, TO WORK VERY HARD, TRIED TO SEE THE FACTS.

9 THEY WENT BACK TO SOMALIA, WHERE SHE DESCRIBED RIGHT NOW IT IS
10 NOT SAFE, TO SEE. ALSO I WOULD LIKE TO SAY THANKS FOR MY
11 COMMUNITY, SOMALIA COMMUNITY, FOR SUPPORTING ME AND STAND FOR
12 ME. THEY KNOW WHO I AM. I WANT TO SAY MY FAMILY, MY MOM AND
13 MY BROTHER AND SISTER, WHO IS HERE EVERY DAY.

14 FOR THAT I WOULD LIKE TO TALK ABOUT MY BACKGROUND,
15 MY FAMILY. I HAVE FIVE KID. I AM 36 YEARS OLD. AND MY
16 FIVE -- AND I HAVE MY FIVE KID. MY WIFE, SINCE I HAVE BEEN
17 ARRESTED, SHE GET SICK. AND SHE GET A VERY DANGEROUS DISEASE,
18 WHICH IS CALLED BREAST CANCER. I COULDN'T SUPPORT HER BECAUSE
19 I WAS ARRESTED. MY FAMILY TRIED TO SUPPORT HER BECAUSE
20 SOMALIA, THEY DON'T HAVE ANY TECHNOLOGY TO DIAGNOSE HER AND
21 FOUND OUT WHAT KIND OF DISEASE SHE HAVE. THEY SEND HER TO
22 MALAYSIA, AND SHE DIAGNOSED THERE AND SHE GET THERAPY AND SHE
23 GET -- SHE BE THERE ABOUT ALMOST ONE YEAR.

24 I WAS WORRIED ABOUT A LOT MY KID, WHAT IS GOING TO
25 HAPPEN TO THEM BECAUSE I AM NOT THERE.

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1 **THE COURT:** MR. MOALIN, I READ YOUR WIFE'S LETTER.

2 **DEFENDANT MOALIN:** THANK YOU.

3 **THE COURT:** SHE INDICATED THAT SHE WAS SUFFERING
4 FROM BREAST CANCER AT THIS TIME. THERE WAS NO INDICATION,
5 HOWEVER, THAT SHE WAS RECEIVING TREATMENT. YOU SAY SHE IS
6 RECEIVING TREATMENT?

7 **DEFENDANT MOALIN:** YES.

8 **THE COURT:** I ASSUME THE PROGNOSIS, THE FUTURE IS
9 BETTER FOR HER?

10 **DEFENDANT MOALIN:** I HOPE SHE IS. BUT I WORRY
11 ABOUT HER A LOT. LIKE SHE SAID, YOU KNOW, BECAUSE WE NEVER
12 KNEW THAT DISEASE COMING BACK, AND I DON'T KNOW HOW LONG FREE.
13 I WORRY ABOUT A LOT ABOUT MY KID.

14 I WAS -- I WANT TO TELL YOU WHAT HAPPENED TO ME WHEN
15 I WAS -- LIKE ALICE AND DRATEL ALSO EXPLAIN TO YOU.

16 1992, WHEN CIVIL WAR BROKE OUT IN SOMALIA, THE
17 MILITIA ATTACK OUR HOUSE. AND I GIVE SEVERAL BULLETS IN MY
18 STOMACH AND MY HAND, YOU CAN SEE. MY FAMILY, THEY LEFT ME AS
19 DEAD. LATER MY NEIGHBOR FOUNDED ME. I WAS STILL ALIVE. HE
20 TAKE ME TO THE HOSPITAL, I BEEN IN THREE MONTHS IN THE
21 HOSPITAL. I REUNITE TO MY FAMILY -- REUNITE WITH MY FAMILY IN
22 REFUGEE CAMP IN KENYA. I WAS LUCKY WHEN I WAS -- IMMIGRATION
23 GRANTED ME U.S. TO BE HERE.

24 **THE COURT:** ON THAT ISSUE, JUST THE TIMING OF IT.
25 AS I READ THE LETTERS, READ THROUGH ALL OF THE MATERIALS --

1 AND I DID READ EVERYTHING THAT WAS SUBMITTED.

2 **DEFENDANT MOALIN:** THANK YOU, YOUR HONOR.

3 **THE COURT:** I THOUGHT YOUR FAMILY FLED, LEFT YOU
4 BEHIND BECAUSE THEY THOUGHT YOU WERE DEAD. AND THEN AFTER
5 THAT SOME SOLDIERS OR TERRORISTS APPEARED, WHATEVER, ARMED
6 INDIVIDUALS, AND SHOT YOU TWO OR THREE TIMES.

7 **DEFENDANT MOALIN:** EXACTLY.

8 **THE COURT:** AND THEN LEFT. YOU DIDN'T MENTION THAT
9 AS YOU WERE DESCRIBING THINGS, THAT YOU WERE SHOT.

10 **DEFENDANT MOALIN:** EXCUSE ME, YOUR HONOR, BUT THIS
11 IS NOT MY FIRST LANGUAGE. AND ALSO I AM KIND OF, LIKE, HAVING
12 A LOT OF PROBLEM, SO I WOULD LIKE TO PATIENT WITH ME A LITTLE
13 BIT AND TRY TO UNDERSTAND MY WORD. AND I APPRECIATE YOU SEE
14 ALL THIS INFORMATION. AND THANKS, YOUR HONOR.

15 AND COUPLE TIMES ALSO NOT ONLY THAT, I USED TO HAVE
16 HEART DISEASE, TOO. I DON'T KNOW BASICALLY THE NAME BUT MY
17 DOCTOR TOLD ME A VALVE. I USED TO HAVE BACK HOME IN SOMALIA.
18 ALWAYS WHEN I GET SICK THEY USED TO TAKE ME TO THE HOSPITAL,
19 THE FAMILY -- AND I WOULD LATER HAVE THAT TECHNOLOGY AND THEY
20 NEVER FOUND WHAT KIND OF PROBLEM I HAVE.

21 **THE COURT:** YOU KNOW WHAT KIND OF PROBLEM YOU HAD,
22 YOU HAD SOME FORM OF ARRHYTHMIA, AND YOU HAD A PROCEDURE AND
23 THAT CORRECTED THE ARRHYTHMIA.

24 **DEFENDANT MOALIN:** YES. AND I GET OKAY, SENDING ME
25 HOME. WHEN I GET TO UNITED STATES, 1996, AFTER SECOND --

1 AFTER THREE WEEKS, COUPLE WEEKS, THE PAIN COMING BACK, AND I
2 CALL 911. AMBULANCE COME TO ME AND TOOK ME TO THE HOSPITAL.
3 I WAS LUCKY. THE DOCTOR TOLD ME WE KNOW THIS KIND OF PROBLEM,
4 YOU ARE LUCKY YOU BE HERE BECAUSE BEFORE THEY OPEN THE PEOPLE,
5 RIGHT NOW WE HAVE THE TECHNOLOGY, WE HAVE THE LASER TO USE AND
6 YOU WOULD BE OKAY. TAKE ME THREE MONTHS. I GET SURGERY
7 ALVARADO HOSPITAL AND MERCY HOSPITAL IN SAN DIEGO. AFTER THAT
8 I WAS OKAY.

9 I WAS SO PROUD TO BE AMERICA, THAT IS WHY I LOVE
10 AMERICA. I BEEN SUCCESSFUL. I USED TO BE UNEMPLOYED WHEN I
11 WAS IN SOMALIA. I GET A NICE JOB IN AMERICA. NEVER THOUGHT
12 ANYTHING BAD OF AMERICA, I LOVE AMERICA. AND I NEVER SAY
13 ANYTHING BAD AMERICA, AND I AM NOT GOING TO.

14 SO JUDGE, YOU HEARD MY LAWYER AND YOU HEAR ME, AND
15 YOU UNDERSTAND THE SITUATION. AND ALSO WHEN I GET HEALTHY AND
16 GET MY WORK, I KNOW ALL THOSE KID WHAT THEY ARE GOING THROUGH,
17 AND I DON'T WANT TO HAPPEN TO THEM TO HAPPEN ME. I TRIED TO
18 HELP THEM OUT, SENDING THEM TO SCHOOL, TRY HELPING ALL OF
19 THOSE KIDS TO GO TO STRAIGHT TO SCHOOL.

20 ALSO I SUPPORT EDUCATION. THAT IS YOU ALREADY SEEN
21 ILYAS, WHICH HAS A BIG BRANCH TODAY. I AM ONE OF THE PEOPLE
22 WHO FOUND THAT, STARTED THESE SCHOOL. AND TODAY THEY HAVE A
23 DAILY ATTENDANCE TO SCHOOL IN SOMALIA.

24 YOUR HONOR, I AM SUPPORTED EDUCATION, I AGAINST
25 VIOLENCE. I SUPPORT THE RELIGIOUS TOLERANCE. I SUPPORT

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1 EDUCATION OF GIRLS AND BOYS AND WOMAN. I LIKE EVERYBODY TO BE
2 ABLE TO HAVE THE OPPORTUNITY LIKE I HAVE. AND ALL THOSE
3 PEOPLE, THEY ARE STILL DEPENDING ME FINANCIALLY, THEY DEPEND
4 ON ME FINANCIALLY, AND I WOULD LIKE TO SUPPORT THEM, AND THEY
5 WAITING ME. SO I ASK YOU, YOUR HONOR, TO CONSIDER WHAT YOU
6 SEE, AND WHAT YOU SEE FROM ME.

7 AND ALSO, JUDGE, I OPPOSE SHABAAB, WHAT HE DOING TO
8 MY PEOPLE. THEY KILL A LOT OF PEOPLE, EDUCATED, FROM MY
9 PEOPLE, MY TRIBE AND DEPORTED TO SOMALIA PEOPLE. AND I
10 DON'T -- I DO NOT BELIEVE HOW THEY ARE DOING AND I DON'T LIKE
11 WHAT THEY ARE DOING IN SOMALIA. THEY ONLY BECAME MY FRIEND,
12 THE ONE YOU SEE ALREADY SPEAK TO HERE, AND THEY ALREADY PUT ME
13 TO KILL ME WHEN I ORGANIZE THEM TO AGAINST AL-SHABAAB THEY PUT
14 MY HEAD TO KILL ME. WHEN I LET THEM TO STAY MY HOUSE AS THE
15 SUVY [PH.], I LET THEM TO STAY, THEY ARE AGAINST THEM. ALL
16 THAT I NEEDED TO CONSIDER, JUDGE.

17 I WOULD LIKE TO SAY A LOT OF THING ABOUT ME, BUT I
18 AM KIND OF LIKE A LITTLE BIT NERVOUS. SO THANK YOU VERY MUCH,
19 YOUR HONOR, TO LISTEN TO ME AND GIVE ME THIS OPPORTUNITY TO
20 LISTEN TO ME. THANK YOU VERY MUCH, YOUR HONOR.

21 **THE COURT:** THANK YOU, MR. MOALIN.

22 MR. COLE.

23 **MR. COLE:** THANK YOU, YOUR HONOR.

24 THIS IS AN UNUSUAL SENTENCING HEARING. I DON'T MEAN
25 UNUSUAL IN WHAT HAS OCCURRED, BUT COUNSELS' AND DEFENSE

1 COMMENTS HAVE BEEN WELL RECEIVED, OF COURSE, BUT JUST THE
2 NATURE OF THE OFFENSE. A LOT OF CASES ARE SENTENCED IN THIS
3 COURTHOUSE, AND THIS IS AN OUTLIER FOR SURE, FOR ME AT LEAST,
4 IN TERMS OF A SENTENCING HEARING. I THINK I ONLY WANT TO
5 EMPHASIZE A FEW POINTS, YOUR HONOR IS SO FAMILIAR WITH THE
6 CASE, THE TRIAL AND THE SENTENCING PAPERS.

7 I THINK THE FIRST POINT I WANT TO EMPHASIZE, YOUR
8 HONOR, IS THAT MR. MOALIN'S OFFENSE WAS, IN THE UNITED STATES'
9 MIND, PARTICULARLY WILLFUL. AND WHAT I MEAN BY THAT IS, YOUR
10 HONOR MIGHT RECALL THAT IN MARCH OF 2008, WHEN THE UNITED
11 STATES PUBLICLY ANNOUNCED THE DESIGNATION OF AL-SHABAAB AS A
12 FOREIGN TERRORIST ORGANIZATION, MR. MOALIN KNEW ABOUT IT
13 IMMEDIATELY. WE PLAYED AT TRIAL PHONE CALLS ABOUT THAT. HE
14 KNEW RIGHT AWAY THAT AL-SHABAAB HAD BEEN DESIGNATED. I AM
15 SURE HE KNEW ABOUT IT LONG BEFORE YOU OR I SAW THE
16 SIGNIFICANCE OF THAT NEWS OR EVEN HEARD THE NEWS.

17 HE LISTENED TO MUKHTAR ROBOW STATE THAT WE ARE HAPPY
18 TO HEAR THAT THE AMERICANS ADDED US TO THE LIST OF THE
19 NATIONAL TERRORIST ORGANIZATIONS. DESPITE THAT TYPE OF CLEAR
20 DIRECT KNOWLEDGE, MR. MOALIN WILLFULLY DECIDED TO FUND
21 AL-SHABAAB, TO CONTINUE FUNDING THEM.

22 THEN IN MAY, ON MAY 1ST WHEN ADEN AYROW IS KILLED IN
23 THE U.S. MISSILE STRIKE, HE PAUSES BRIEFLY BECAUSE HE IS
24 WORRIED ABOUT SURVEILLANCE. THAT IS HOW AWARE HE IS, THAT IS
25 HOW WILLFUL HIS CONDUCT IS. MR. MOALIN IS WORRIED THAT HIS

1 OWN PHONE MAY BE MONITORED. THERE WAS A LOT OF IRONY, OF
2 COURSE, AT THE TIME IN THAT. SO HE PAUSES BRIEFLY, THINKING
3 THE CALLS ARE GOING TO BE ON WHAT HE SAYS IS ALERT DURING
4 THESE DAYS FOLLOWING THE STRIKE. AND THEN WITHIN DAYS HE IS
5 OUT LOOKING FOR ABU ZUBEYR, GOING UP THE CHAIN IN AL-SHABAAB.
6 IT IS A VERY WILLFUL OFFENSE IN THAT CONTEXT.

7 AND THIS WAS ALL UNDERTAKEN BY SOMEONE WHO AT THE
8 TIME WHO WAS A UNITED STATES CITIZEN, HAD BEEN FOR QUITE SOME
9 TIME.

10 NOW, THERE WERE A LOT OF -- IT IS TRUE THAT POLITICS
11 MAKE VERY STRANGE BEDFELLOWS, AND PROBABLY SOME OF THE
12 STRANGEST BEDFELLOWS IN SOMALIA BECAUSE THE POLITICS ARE SO
13 CONFUSED THERE AND SO SHIFTING CONSTANTLY. AND IT COULD VERY
14 WELL BE THAT DOWN THE ROAD MR. MOALIN HIMSELF CAME TO REGRET
15 HIS SUPPORT OF AL-SHABAAB. AND I DON'T MEAN JUST BECAUSE HE
16 WAS CHARGED WITH IT, I MEAN HE COULD HAVE COME TO REGRET IT ON
17 HIS OWN LATER AS GROUNDS IN SOMALIA SHIFTED AGAIN.

18 BUT THAT REALLY ISN'T THE POINT. THE POINT ISN'T
19 WHAT HE THOUGHT ABOUT AL-SHABAAB LATER, IT IS WHAT HE THOUGHT
20 WHEN HE KNEW THAT THE UNITED STATES HAD DESIGNATED AL-SHABAAB
21 AS A FOREIGN TERRORIST ORGANIZATION. AND HE WILLFULLY DECIDED
22 TO MAKE THE CHOICE, EVEN AT THE RISK OF SURVEILLANCE, TO FUND
23 THE ORGANIZATION.

24 AND THE CONSEQUENCES, OF COURSE, HAVE BEEN TRAGIC.
25 I DON'T MEAN JUST HIS SUPPORT OF AL-SHABAAB, BUT IN GENERAL

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1 AL-SHABAAB -- THE U.S. GOT IT RIGHT. CAN'T ALWAYS SAY THAT
2 ABOUT U.S. FOREIGN POLICY, BUT THE POINT IS IS THAT WHEN THE
3 U.S. SETS A POLICY AND THE STATE DEPARTMENT MAKES A
4 DESIGNATION, WE AS U.S. CITIZENS DON'T DECIDE TO DISAGREE.

5 AND THEY GOT IT RIGHT. THE SAME ABU ZUBEYR WHO HE
6 WAS LOOKING TO MAKE CONTACT WITH IS NOW -- JUST A MONTH OR SO
7 AGO THE NAVY SEALS WERE -- PEOPLE THOUGHT IT MUST BE HIM THAT
8 THE NAVY SEALS WERE AFTER WHEN THEY MADE AN INCURSION IN
9 SOMALIA. IN THE NEWS, IT WAS A BIG DEAL.

10 I THINK THAT DISTINGUISHES HIM FROM NIMA YUSUF.
11 NIMA YUSUF WAS A YOUNG WOMEN, YOUR HONOR, WHO PROVIDED LESS
12 THAN \$2,000 TO A GROUP OF YOUNG MEN. THESE YOUNG MEN WERE NOT
13 ADEN AYROW. SHE WASN'T TRYING TO REACH ABU ZUBEYR TO FUND
14 HIM. SHE WAS PROVIDING FUNDS TO A GROUP OF YOUNG
15 SOMALI-AMERICAN MEN WHO SHE, IN SOME CASES, MAY HAVE HAD A
16 CRUSH ON, IN OTHER CASES HAD PREEXISTING RELATIONSHIPS WITH.
17 AND HAD LEFT THE UNITED STATES TO GO FIGHT FOR AL-SHABAAB IN
18 SOMALIA.

19 HER OFFENSE WAS SERIOUS, BUT I WOULD SUBMIT THAT IT
20 IS DISTINGUISHABLE FROM MR. MOALIN'S. MR. MOALIN IS A PERSON
21 OF CERTAIN PRIVILEGE. HE HAD BEEN LIVING IN THE UNITED STATES
22 SINCE 1996. HE OWNED A HOME IN MOGADISHU. HE HAD THE
23 RESOURCES TO BUILD ANOTHER LARGE COMPOUND IN GURIEEL. HE HAD
24 ACCESS TO LEADERS OF AL-SHABAAB.

25 HE WASN'T -- WE ARE NOT TALKING ABOUT 18 OR

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1 19-YEAR-OLD YOUNG MEN WHO WERE GOING TO GO, UNFORTUNATELY,
2 LOSE THEIR LIVES, LIKELY, IN SOMALIA. HE WAS REACHING OUT FOR
3 THE LEADERSHIP AND HE HAD AN ABILITY, WITHIN HIS COMMUNITY, AS
4 INDICATED PERHAPS BY THE LETTERS THEMSELVES, HE HAD GREAT
5 INFLUENCE IN HIS OWN COMMUNITY. HE COULD INFLUENCE MANY. SO
6 I THINK HE IS DISTINGUISHABLE FROM NIMA YUSUF.

7 I THINK HE IS DISTINGUISHABLE FROM MOHAMED YUSUF AS
8 WELL IN A COUPLE OF PARTICULARS.

9 YOU KNOW, WHEN YOU LOOK AT SIMILARLY-SITUATED
10 DEFENDANTS AS PART OF THE 3553(A) FACTORS OFTEN YOU -- IT IS
11 HARD BECAUSE YOU HAVE A ONE-DEFENDANT CASE AND YOU HAVE TO TRY
12 TO LOOK ACROSS THE DISTRICT OR THE COUNTRY FOR SOME CASE THAT
13 IS SOMEWHAT SIMILAR. HERE MOHAMED YUSUF WAS ESSENTIALLY A
14 CO-CONSPIRATOR, HE JUST HAPPENED TO BE PROSECUTED IN ST.
15 LOUIS. HE WAS ON THE PHONE. THE JURY AND YOUR HONOR HEARD
16 MANY PHONE CALLS WITH SHEIKH HASSAN.

17 AND HE -- WHEN HE WAS APPREHENDED IN ST. LOUIS
18 AROUND THE SAME TIME AS THESE DEFENDANTS, HE PLED GUILTY AND
19 WAS SENTENCED TO 140 MONTHS IN CUSTODY. SO HE NOT ONLY
20 ACCEPTED RESPONSIBILITY, WHICH DISTINGUISHES HIM FROM
21 MR. MOALIN, BUT HE WAS CONVICTED, ULTIMATELY, OF PROVIDING
22 ABOUT \$5,000. AND MR. MOALIN NOT ONLY ORGANIZED AND PROVIDED
23 MORE MONEY, BUT HE ALSO PROVIDED THE HOME IN MOGADISHU TO
24 AL-SHABAAB.

25 AND AS I MENTIONED IN THE SENTENCING MEMORANDA, THE

1 HOME WHERE THERE IS A GUN BATTLE LATER AND PEOPLE ARE ACTUALLY
2 SHOT AS THERE IS A BATTLE BETWEEN AL-SHABAAB MEMBERS AND OTHER
3 FORCES TRYING TO RID THEM FROM THAT PART OF THE NEIGHBORHOOD.

4 AND I THINK THAT -- I CERTAINLY MR. DRATEL FROM THE
5 STANDPOINT THAT PEOPLE SHOULD NOT BE PUNISHED FOR WANTING TO
6 GO TO TRIAL, PER SE. AND THAT'S NOT THE INTENT OF ANY COMMENT
7 I AM MAKING. BUT THE TRIAL HAS HAPPENED, THERE IS STILL NO
8 ACCEPTANCE OF RESPONSIBILITY, SO THE ISSUE REALLY IS
9 ACCEPTANCE OF RESPONSIBILITY.

10 AND I WOULD SUBMIT THAT WHEN YOU HAVE SOMEBODY WHO
11 IS SO WELL-KNOWN IN THE COMMUNITY, SOMEBODY WHO IS -- HAS HAD
12 INFLUENCE, THAT IT IS PARTICULARLY UNFORTUNATE THAT HE HASN'T
13 ACCEPTED RESPONSIBILITY. BECAUSE NOT ONLY DOES IT
14 UNDERMINE -- NOT ONLY HIS FAILURE TO DO SO SHOW A LACK OF
15 REMORSE AND CALL INTO QUESTION, UNFORTUNATELY, HIS FUTURE
16 CONDUCT, BUT IT ALSO, I THINK, UNDERMINES TRUST IN OUR
17 JUDICIAL SYSTEM.

18 IT IS NOT HIS RESPONSIBLY TO BUILD TRUST IN OUR
19 JUDICIAL SYSTEM, I UNDERSTAND. HE IS AN INDIVIDUAL AND CAN
20 ASSERT HIS RIGHTS TO THE FULLEST. BUT TO GO THROUGH THE
21 TRIAL, THE EXTENT OF THE EVIDENCE, AND TO NOT ACCEPT
22 RESPONSIBILITY I THINK DISTINGUISHES HIM FROM MOHAMED YUSUF.

23 SO UNLESS THE GOVERNMENT HAS ANY -- EXCUSE ME -- THE
24 COURT HAS ANY QUESTIONS, THE UNITED STATES SUBMITS ON ITS
25 PAPERS. THIS IS A SERIOUS OFFENSE INVOLVING TERRORISM,

1 INVOLVING SUPPORT OF A FOREIGN TERRORIST ORGANIZATION THAT HAS
2 GONE ON TO BECOME WORSE AND WORSE AND MORE HEINOUS. HAD ALL
3 PARTIES WORKED WITH THE UNITED STATES GOVERNMENT AT THE OUTSET
4 TO CUT OFF, DEFUND AND DESTROY AL-SHABAAB, A LOT OF SUFFERING
5 WOULD HAVE BEEN AVOIDED.

6 SO, YOUR HONOR, THE GOVERNMENT SUBMITS.

7 **THE COURT:** THANK YOU.

8 **MR. DRATEL:** YOUR HONOR, IF I MIGHT JUST BRIEFLY.

9 **THE COURT:** OKAY.

10 **MR. DRATEL:** I DON'T THINK THAT THERE IS REALLY A
11 DISTINGUISH BETWEEN A TRIAL RIGHT AND AN APPELLATE RIGHT.
12 MR. MOALIN HAS THE RIGHT TO ASSERT HIS APPELLATE RIGHTS, AND
13 THAT TO SUGGEST THAT BECAUSE OF A GUILTY VERDICT HE NOW HAS TO
14 DO MORE THAN ACKNOWLEDGE, IN THE CONTEXT OF SENTENCING, AND
15 GET SENTENCED HIGHER AS A RESULT I THINK WOULD BE WRONG.

16 **THE COURT:** I DON'T THINK THAT IS WHAT MR. COLE IS
17 SAYING, MR. DRATEL. AND I ANTICIPATED THAT YOU WOULD PROBABLY
18 WANT TO RISE AND MAKE THIS COMMENT.

19 BUT MR. COLE IS MERELY SAYING THAT WHERE THERE IS A
20 CASE WHERE ACCEPTANCE OF RESPONSIBILITY EXISTS, THEN THAT IS
21 SOMETHING THAT EVEN THE GUIDELINES PROVIDE FOR, AS YOU WELL
22 KNOW.

23 IF YOU WERE REPRESENTING TWO PEOPLE, ONE OF WHOM
24 WENT TO TRIAL AND WAS FOUND GUILTY AND THE OTHER OF WHOM PLED
25 GUILTY, YOU WOULD BE ON YOUR FEET ARGUING FOR A MITIGATED

1 SENTENCE; NOT BECAUSE THE OTHER INDIVIDUAL IS BEING PUNISHED
2 FOR GOING TO TRIAL BUT BECAUSE THE SECOND INDIVIDUAL HAS
3 ACCEPTED RESPONSIBILITY.

4 AND THIS IS SOMETHING THE GUIDELINES TAKE INTO
5 ACCOUNT, AS YOU WELL KNOW, UNDER CHAPTER THREE, AND COURTS
6 TRADITIONALLY TAKE INTO ACCOUNT. I DON'T THINK JUDGES
7 PENALIZE PEOPLE FOR EXERCISING THEIR CONSTITUTIONAL RIGHT TO
8 GO TO TRIAL.

9 **MR. DRATEL:** I UNDERSTAND, YOUR HONOR. BUT PUT IT
10 INTO A FULLER CONTEXT, WHICH IS -- AND ANOTHER THING THE
11 GOVERNMENT TALKED ABOUT IN TERMS OF COMPARING IT TO MR. YUSUF
12 WAS THE AMOUNT OF MONEY. I DON'T THINK THERE IS A MATERIAL
13 DIFFERENCE BETWEEN 5,000 AND 8,000 AND EVEN 15,000. THAT IS
14 NOT A MATERIAL DIFFERENCE. I DON'T THINK THAT IS A
15 DISTINCTION THAT WOULD REQUIRE A GREATER SENTENCE FOR
16 MR. MOALIN.

17 ALSO WE HAVE NO EVIDENCE, ZERO EVIDENCE -- AND FROM
18 WHAT I KNOW ABOUT THE CASE AND MR. YUSUF THERE IS NO
19 COMPARISON IN TERMS OF THE BALANCE OF THEIR WORK FOR THE
20 COMMUNITY IN SOMALIA AND HERE. THERE IS NO COMPARISON TO THE
21 WORK THAT MR. MOALIN HAS DONE -- WHICH, I THINK, IN THE
22 BALANCING OF ALL OF THE COMPONENTS OF SENTENCING, VASTLY
23 OUTWEIGHS THE DISCOUNT, FOR WANT OF A BETTER TERM, FOR
24 ACCEPTANCE. I THINK ALL OF THAT IS A HUGE FACTOR.

25 AND, YOU KNOW, I KNOW WHAT THE VERDICT MEANS. THE

1 VERDICT MEANS THAT THIS WAS A BAD AND ILLEGAL DECISION BY
2 MR. MOALIN TO PUT THAT MONEY IN THAT DIRECTION.
3 NOTWITHSTANDING ALL OF THE OTHER MONEY THAT WENT IN THE RIGHT
4 DIRECTION, VASTLY OUT DISTANCING THIS 5 OR 8 OR 15,000,
5 WHATEVER IT IS.

6 HISTORY MAY JUDGE -- MAY HAVE ALREADY JUDGED THAT
7 THE UNITED STATES BACKED THE WRONG HORSE IN AFGHANISTAN,
8 BACKED THE WRONG HORSE IN EGYPT. MAYBE IN SYRIA, HISTORY WILL
9 JUDGE THAT. THESE ARE HARD DECISIONS AND PEOPLE -- HE IS
10 PAYING THE PRICE FOR THAT DECISION ON HIS PART. HE IS GOING
11 TO CONTINUE TO PAY IT FOR HOWEVER LONG THE COURT SEES FIT TO
12 DO IT.

13 I JUST ASK THAT THE COURT RECOGNIZE THAT THIS
14 SIX-MONTH WINDOW OF CONDUCT WE ARE TALKING -- AND WE KNOW THAT
15 IS ALL IT IS BECAUSE HE IS OVERHEARD AFTERWARDS AND HE IS
16 INVESTIGATED BEFORE. WE KNOW IT IS A SIX-MONTH WINDOW,
17 BALANCED AGAINST THE REST OF HIS LIFE FOR GOOD.

18 THAT IS ALL HE ASKS THE COURT TO RECOGNIZE IN
19 SENTENCING, IN DETERMINING WHAT IS SUFFICIENT BUT NOT GREATER
20 THAN NECESSARY.

21 THANK YOU.

22 **THE COURT:** THANK YOU AGAIN, MR. DRATEL.

23 LET ME START OUT BY SAYING THAT WE HAVE FIVE COUNTS
24 OF CONVICTION FOR MR. MOALIN: THE FIRST BEING CONSPIRACY TO
25 PROVIDE MATERIAL SUPPORT TO TERRORISTS; THE SECOND BEING

1 CONSPIRACY TO PROVIDE MATERIAL SUPPORT TO A FOREIGN TERRORIST
2 ORGANIZATION, THAT BEING AL-SHABAAB; THE THIRD BEING
3 CONSPIRACY TO LAUNDER MONETARY INSTRUMENTS, MONEY LAUNDERING;
4 THE FOURTH BEING PROVIDING MATERIAL SUPPORT TO TERRORISTS,
5 THAT BEING THE COUNT RELATED TO MR. MOALIN OFFERING AND
6 PROVIDING HIS HOME IN SOMALIA TO AL-SHABAAB; AND THE FIFTH
7 COUNT BEING PROVIDING MATERIAL SUPPORT TO A FOREIGN TERRORIST
8 ORGANIZATION.

9 I HAVE READ EVERYTHING THAT HAS BEEN SUBMITTED TO
10 ME. I HAVE READ AND CONSIDERED THE PROBATION REPORT,
11 MR. MOALIN'S OBJECTIONS TO THE PROBATION REPORT, THE ADDENDUM
12 TO THE PROBATION REPORT. I CONSIDERED THE SENTENCING
13 MEMORANDA FILED ON BEHALF OF MR. MOALIN, THE EXHIBITS AND THE
14 VOLUMES OF LETTERS. I HAVE CONSIDERED THE SENTENCING CHARTS.
15 THE GOVERNMENT'S SENTENCING MEMORANDUM, OBVIOUSLY. THE NATURE
16 AND CIRCUMSTANCES OF THE OFFENSES, AND HISTORY AND
17 CHARACTERISTICS OF MR. MOALIN, AS WELL AS THE ADVISORY
18 GUIDELINES AND THE STATUTORY PURPOSES OF SENTENCING.

19 I THINK, PERHAPS, I NEED TO START WITH SOME OF THE
20 OBJECTIONS TO THE PROBATION REPORT. I SHOULD BE RESPONDING TO
21 THOSE.

22 SO, COUNSEL, IF YOU WISH TO TURN TO THOSE YOU
23 CERTAINLY MAY. I WILL GIVE YOU A MOMENT SO THAT YOU CAN
24 FOLLOW ALONG.

25 OBVIOUSLY, THE GOVERNMENT PROVIDED AN OBJECTION TO

1 THE GUIDELINES. WHAT I AM GOING TO DO IS DEAL WITH ALL OF THE
2 GUIDELINES, THAT IS THE OBJECTIONS TO GUIDELINES, IN MY OWN
3 ALLOCUTION IN A BIT. BUT WITH RESPECT TO THE FACTUAL
4 DISPUTES, THE FIRST I THINK IS MOOT. THAT RELATES TO THE
5 SENTENCING DATE. I THINK THAT -- WASN'T THAT THE FIRST
6 OBJECTION THAT WAS FILED? YES, THE SENTENCING DATE.

7 THE SECOND IS A CLARIFICATION THAT IS NOTED.

8 THE THIRD RELATES TO PARAGRAPHS 3 THROUGH 54 IN
9 WHICH MR. MOALIN IS MAINTAINING INNOCENCE AND OBJECTING TO THE
10 OFFENSE CONDUCT SECTION GENERALLY.

11 I WOULD OVERRULE THOSE OBJECTIONS WITH CERTAIN
12 EXCEPTIONS. AND THE FOLLOWING PARAGRAPHS ARE SPECIFIC
13 OBJECTIONS WITHIN THAT PARAGRAPH 3-TO-54 PORTION OF THE
14 PROBATION REPORT.

15 THE FOURTH OBJECTION RELATING TO PARAGRAPH 6 I WOULD
16 OVERRULE. I UNDERSTAND THAT'S DEFENDANT'S INTERPRETATION OF
17 OFFENSE CONDUCT.

18 THE FIFTH WOULD BE THE SAME RULING.

19 THE SIXTH WOULD BE THE SAME RULING, AS WELL.

20 THE SEVENTH WOULD BE SUSTAINED. I THINK FARE YARE'S
21 STATUS HAS BEEN CLARIFIED.

22 THE EIGHTH IS -- THE EIGHTH PARAGRAPH OR THE EIGHTH
23 OBJECTION RELATING TO PARAGRAPH 52 WOULD BE OVERRULED. I
24 UNDERSTAND THAT IS MR. MOALIN'S INTERPRETATION.

25 THE NINTH OBJECTION RELATING TO PARAGRAPH 95 WOULD

1 BE SUSTAINED. AND I THINK THAT SHOULD BE NOTED AND CLARIFIED
2 CAREFULLY. THE REASON FOR THE FAILURE TO APPEAR WAS BECAUSE
3 MR. MOALIN WAS IN CUSTODY.

4 THE 10TH OBJECTION RELATING TO PARAGRAPH 109 IS
5 SUSTAINED. AND THAT CLARIFICATION SHOULD BE NOTED, AS WELL AS
6 THE 11TH OBJECTION THAT RELATES TO PAGE 22 WITH THE HEADING
7 EMPLOYMENT RECORD.

8 AND FINALLY, WITH RESPECT TO THE FACTUAL OBJECTIONS,
9 NO. 12, I WOULD DENY THE REQUEST. I DON'T THINK IT IS THE
10 APPROPRIATE FUNCTION OF THE COURT, THIS COURT, TO GET INVOLVED
11 IN THE GOVERNMENT'S SEIZURE OF PROPERTY IN SOMALIA.

12 AND I THINK THAT ENDS THE FACTUAL OBJECTIONS.

13 WITH RESPECT TO THE FACTUAL OBJECTIONS, I WANTED TO
14 STATE SOMETHING HERE AT THE OUTSET.

15 I THINK MR. COLE MENTIONED THAT THIS IS A VERY
16 UNUSUAL CASE. WE DON'T SEE TOO MANY OF THESE, ACTUALLY,
17 ANYWHERE IN THE COUNTRY PROCEEDING TO THIS PARTICULAR POINT IN
18 THE PROCEEDINGS.

19 AS TO THE GUIDELINE DISPUTES, THEY WILL BE
20 ADDRESSED. BUT AT THE OUTSET I OFFER, RESPECTFULLY, THE
21 OBSERVATION THAT BOTH PROBATION AND THE PARTIES ULTIMATELY
22 PROVIDED VERY LITTLE ASSISTANCE TO THE COURT REGARDING A
23 PROPER ADVISORY GUIDELINE ANALYSIS FROM A FUNDAMENTAL AND
24 STRUCTURAL PERSPECTIVE.

25 THE SUBMISSIONS, ONCE AGAIN RESPECTFULLY, IN MY

1 VIEW, THE SUBMISSIONS WERE FUNDAMENTALLY LACKING IN THIS AREA.
2 AND I WILL ATTEMPT TO ADDRESS THESE CONCERNS.

3 TO START WITH, THE ORIGINAL PROBATION REPORT SET
4 FORTH THREE SEPARATE GROUPINGS FOR THE COUNTS OF CONVICTION,
5 ENGAGED IN A MULTIPLE GROUP ANALYSIS AND CONCLUDED DEFENDANT'S
6 GUIDELINE RANGE FOR EACH COUNT WAS LIFE, LIFE IN CUSTODY FOR
7 EACH COUNT OF CONVICTION.

8 THE GOVERNMENT FILED AN OBJECTION TO THE ANALYSIS
9 ARGUING THAT COUNTS 1, 2 AND 5 SHOULD BE GROUPED TOGETHER AND
10 THAT THE ADVISORY GUIDELINE RANGE SHOULD BE 80 YEARS OR 960
11 MONTHS.

12 THE ONLY GUIDELINE SUBMISSION FROM THE DEFENSE WAS,
13 IN EFFECT, AN ARGUMENT THAT THE PLUS-12 ENHANCEMENT SHOULD NOT
14 APPLY UNDER 3A1.4. AND I SHOULD SAY ENHANCEMENTS, PLURAL.
15 THAT WOULD BE THE 12-LEVEL UPWARD ADJUSTMENT AS WELL AS THE
16 INCREASE ON THE CRIMINAL HISTORY CATEGORY FROM I TO VI. AND
17 THAT THE RESULTING TOTAL OFFENSE LEVEL OF 34 YIELDS A
18 GUIDELINE RANGE OF 151 TO 188 MONTHS WITHOUT THESE
19 ENHANCEMENTS.

20 THE PROBATION OFFICER THEN FILED AN ADDENDUM
21 ADOPTING THE GOVERNMENT'S ANALYSIS REGARDING GROUPING, AND
22 RECOMMENDED THAT ALL COUNTS BE STACKED FOR 80 YEARS CUSTODY.
23 THE GOVERNMENT HAS RECOMMENDED 26 YEARS. AND THE DEFENSE
24 MAKES NO SPECIFIC RECOMMENDATION, OTHER THAN TO DEFER TO THE
25 ADVISORY GUIDELINE RANGE THAT IT MADE REFERENCE TO IN THE

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1 OBJECTIONS.

2 I DON'T FAULT THE PARTIES FOR, IN A SENSE, ESCHEWING
3 A PROPER GUIDELINE ANALYSIS HERE, BUT IT IS THE COURT'S
4 FUNCTION TO DO THAT. AND I KNOW THAT THIS BECOMES SOMEWHAT
5 OVERWROUGHT AND ANALYTICAL BUT, AS THE PARTIES KNOW,
6 PARTICULARLY IN THIS CIRCUIT, IT IS VERY, VERY IMPORTANT TO
7 ENGAGE IN A STRUCTURALLY CORRECT ADVISORY GUIDELINE ANALYSIS.

8 I THINK THE PARTIES BASICALLY WENT RIGHT TO THE
9 ANALYSIS UNDER 3553(E) WITHOUT REALLY CLEAVING TO THE
10 PROCEDURAL STRUCTURE OF WHAT IS REQUIRED IN THIS CIRCUIT, AND
11 I WOULD ASSUME ACROSS THE COUNTRY.

12 SO ULTIMATELY, TO BEGIN WITH -- AND I KNOW THAT SOME
13 OF THIS IS JUST ABSOLUTELY GOING TO BORE PEOPLE BEYOND BELIEF.

14 BUT TO BEGIN WITH, WITH ALL FIVE OF THESE COUNTS, IT
15 APPEARS TO ME THAT THEY SHOULD BE GROUPED UNDER 2X1.1, WHICH
16 RELATES TO CONSPIRACY. AND SOME OF THE SUBSTANTIVE SECTIONS
17 THAT APPLY THAT HAVE BEEN REFERRED TO BY THE PARTIES, 2A1.5
18 AND 2S1.1, THAT IS THE MONEY LAUNDERING, BECAUSE THE OFFENSE
19 BEHAVIOR WAS ONGOING OR CONTINUOUS IN NATURE.

20 PUT ANOTHER WAY, THESE VARIOUS COUNTS OF CONVICTION
21 WERE RELATED FOR A COMMON PURPOSE; THAT IS, SUPPORTING
22 TERRORISM. AND I DON'T UNDERSTAND WHY NEITHER PROBATION OR
23 THE GOVERNMENT NOR THE DEFENSE GROUPED THESE COUNTS AS THEY
24 SHOULD BE GROUPED. AND NO ONE GROUPED COUNT 3, THE MONEY
25 LAUNDERING COUNT, WITH OTHER COUNTS.

1 I REALIZE THERE WAS AN ARGUMENT BY THE GOVERNMENT
2 THAT THESE COUNTS SHOULD BE GROUPED. YOU BROKE THE GROUPS
3 DOWN INTO SMALLER GROUPS, OR A LESSER NUMBER OF GROUPS,
4 MR. COLE.

5 MR. COLE: WE THOUGHT THEY ALL SHOULD BE GROUPED
6 EXCEPT MONEY LAUNDERING. BUT THE MONEY LAUNDERING, WE
7 RECOGNIZE, WASN'T GOING TO HAVE AN IMPACT ON THE SENTENCING --
8 THE ULTIMATE GUIDELINE RANGE ANYWAY, FROM OUR PERSPECTIVE.

9 THE COURT: IT STILL HAS TO BE DEALT WITH.

10 MR. COLE: RIGHT.

11 THE COURT: AS A MATTER OF FACT, THE MONEY
12 LAUNDERING COUNT HAS A GREATER STATUTORY MAXIMUM THAN THE
13 OTHERS.

14 MR. COLE: WE JUST -- WHEN WE LOOKED AT THE
15 GUIDELINES -- YOUR HONOR, I APOLOGIZE IF OUR PAPERS WEREN'T
16 PROVIDING THE ASSISTANCE YOU WANTED.

17 WE THOUGHT THAT WE HAD LOOKED AT THE P.S.R., HAD
18 CORRECTED WHAT WE VIEWED THE VARIOUS MISTAKES. WE THOUGHT --
19 IN FACT, ALL OF THE CORRECTIONS WE MADE WERE TO THE DEFENSE'S
20 BENEFIT, DRIVING DOWN. AND WE THOUGHT THEY ALL SHOULD
21 GROUP -- I DON'T REMEMBER OFFHAND RIGHT NOW WHY THE ANALYSIS
22 WAS -- UNDER OUR GUIDELINES ANALYSIS WE FELT THAT THE MONEY
23 LAUNDERING DID NOT TECHNICALLY GROUP, WE FELT, WHEN WE LOOKED
24 AT THE GUIDELINES. BUT WE COULD HAVE BEEN WRONG ABOUT THAT.
25 AND WE ALSO RECOGNIZE IT WASN'T GOING TO INCREASE.

1 **THE COURT:** AT LEAST I AM GLAD YOU ARE NOT PROVIDING
2 ME WITH AUTHORITY THAT THE MONEY LAUNDERING COUNT SHOULD BE
3 SEPARATELY GROUPED, BECAUSE THAT WAS MY THOUGHT GOING THROUGH
4 ALL OF THIS. NOT THAT IT SHOULD BE SEPARATELY GROUPED BUT
5 THAT IT SHOULD BE GROUPED WITH THE OTHER COUNTS.

6 **MR. COLE:** THAT IS FINE.

7 **THE COURT:** AND NO ONE DID THAT. SO OBVIOUSLY WE
8 HAVE GOT VERY EXPERIENCED COUNSEL ON BOTH SIDES OF THE LEDGER
9 HERE. WE HAVE GOT PROBATION, AS WELL. AND NO ONE DID THAT.

10 SO ONE BEGINS TO DOUBT ONESELF AS A SENTENCING JUDGE
11 WHEN, FIRST OF ALL, YOU REALIZE THAT THERE IS AN ABSOLUTE
12 MANDATE TO PERFORM A STRUCTURALLY SOUND GUIDELINE ANALYSIS.
13 AND SECONDLY, NO ONE, EVEN IN THE REGROUPING SUGGESTED BY THE
14 GOVERNMENT AND READILY ACCEPTED BY PROBATION, THERE WAS NO
15 INCLUSION OF THE MONEY LAUNDERING COUNT UNDER 2S1.1 IN THE
16 PRIMARY GROUP.

17 I WOULD ONLY ASK COUNSEL AND PROBATION TO TAKE A
18 LOOK AT APPLICATION NOTE 6 OF 2S1.1, WHICH READS AS FOLLOWS --
19 AND IT DEALS WITH GROUPING OF MULTIPLE COUNTS. UNLESS I AM
20 REALLY MISSING SOMETHING, I THINK THAT THE MONEY LAUNDERING
21 COUNT IS SOMETHING THAT SHOULD BE INCLUDED.

22 IT READS AS FOLLOWS: IN A CASE IN WHICH THE
23 DEFENDANT IS CONVICTED OF A COUNT OF LAUNDERING FUNDS AND A
24 COUNT FOR THE UNDERLYING OFFENSE FROM WHICH THE LAUNDERED
25 FUNDS WERE DERIVED, THE COUNTS SHALL BE GROUPED PURSUANT TO

1 SUBSECTION C OF 3D1.2, GROUPS OF CLOSELY-RELATED COUNTS.

2 SO THAT WAS MY READING OF WHAT SHOULD HAVE BEEN DONE
3 HERE. AND SO, GETTING BACK TO THE POINT I WAS MAKING EARLIER,
4 I BELIEVE THAT ALL OF THESE -- ALL OF THESE GROUPS ARE
5 ULTIMATELY -- EXCUSE ME -- ALL OF THESE COUNTS SHOULD BE
6 GROUPED.

7 AND SO THE GUIDELINE ANALYSIS, THEN, THAT I AM GOING
8 TO ENTER INTO HERE IS FOR ALL OF THE COUNTS OF CONVICTION.
9 AND THE BASE OFFENSE LEVEL IS A 33. THERE IS A 12-LEVEL
10 UPWARD ADJUSTMENT, IN MY VIEW, UNDER 3A1.4.

11 THE RELEVANT SECTIONS READ AS FOLLOWS: IF THE
12 OFFENSE IS A FELONY THAT INVOLVED, OR WAS INTENDED TO PROMOTE,
13 A FEDERAL CRIME OF TERRORISM, INCREASE BY 12 LEVELS.

14 THAT'S THE RELEVANT PORTION OF 3A1.4 SUBDIVISION A.

15 AND THEN SUBDIVISION B READS: IN EACH SUCH CASE,
16 THE DEFENDANT'S CRIMINAL HISTORY CATEGORY FROM CHAPTER FOUR
17 SHALL BE CATEGORY VI.

18 THAT IS EVEN IF IT WAS A CATEGORY I. AND OBVIOUSLY
19 THESE ARE FAIRLY DRACONIAN ENHANCEMENTS, ESPECIALLY AT THE
20 HIGHER LEVELS OF THE SENTENCING TABLE.

21 SO I AGREE WITH PROBATION AND THE GOVERNMENT THAT
22 THESE ENHANCEMENTS APPLY. BEYOND A REASONABLE DOUBT I WOULD
23 FIND THAT THESE OFFENSES WERE CALCULATED TO INFLUENCE OR
24 AFFECT GOVERNMENTAL ACTION BY INTIMIDATION OR COERCION.

25 AL-SHABAAB IS A BRUTAL TERRORIST ORGANIZATION, AND

1 EVERYONE AGREES THERE, ENGAGED IN BOMBINGS, INCLUDING THE
2 BOMBING OF THE PRESIDENTIAL PALACE, ASSASSINATIONS, AMBUSHES,
3 USING EXPLOSIVE DEVICES AND FIREARMS OF ALL KINDS IN A
4 CAMPAIGN TO TERRORIZE AND DETER AND ULTIMATELY DEFEAT THE
5 TRANSITIONAL FEDERAL GOVERNMENT IN SOMALIA, INCLUDING ITS
6 ASSOCIATED FORCES FROM ETHIOPIA AND AFRICAN UNION MEMBERS.

7 I WOULD ADOPT THE COMPREHENSIVE DETAILS OF THE
8 ATTACKS AS SET FORTH BY THE GOVERNMENT IN ITS SENTENCING
9 MEMORANDUM, PARTICULARLY AT PAGES 9 AND 10.

10 THE ARGUMENT THAT THE TRANSITIONAL FEDERAL
11 GOVERNMENT WAS NOT A FUNCTIONING GOVERNMENT AND THEREFORE THE
12 ENHANCEMENTS DON'T APPLY IS A BIT LIKE THE ADULT CHILD WHO
13 KILLS HIS PARENTS AND THEN ASKS FOR MERCY ON ACCOUNT OF HE IS
14 AN ORPHAN. I THINK THAT -- I THINK THERE IS A PARODY OF
15 REASONING BETWEEN THAT OLD STORY AND WHAT HAPPENED HERE.

16 ULTIMATELY, THE TOTAL OFFENSE LEVEL, CONTINUING ON
17 WITH A GUIDELINE ANALYSIS, IS A 43, AND THE CRIMINAL HISTORY
18 CATEGORY IS A VI.

19 NOW, THE INITIAL GUIDELINE RANGE OF LIFE MUST YIELD
20 TO THE STATUTORY MAXIMUM FOR EACH COUNT OF CONVICTION PURSUANT
21 TO SECTION 5G1.1 OF THE ADVISORY GUIDELINES. I DIDN'T SEE
22 5G1.1 REFERRED TO ANYWHERE IN THE SENTENCING MEMORANDA
23 SUBMITTED BY THE PARTIES OR IN THE PROBATION REPORT AND THE
24 ADDENDUM TO THE PROBATION REPORT. BUT IN MY VIEW, AND ONCE
25 AGAIN RESPECTFULLY, IT IS AT THIS POINT OF THE GUIDELINE

1 ANALYSIS WHERE THE PARTIES AND PROBATION HAVE FALTERED.

2 AT THIS JUNCTURE I DO NEED TO DISCUSS THE INTERPLAY
3 BETWEEN GUIDELINE SECTION 5G1.1 AND 5G1.2, AND THE DEFINITION
4 OF THE TERM TOTAL PUNISHMENT AS USED IN 5G1.2 AND THE
5 DEFINITION OF THAT TERM IN THE APPLICATION NOTE.

6 NOW, ONCE AGAIN I APOLOGIZE FOR THE HIGHLY TECHNICAL
7 NATURE OF THIS, BUT THIS IS SOMETHING THE COURT IS MANDATED TO
8 DO. PERHAPS THE PARTIES ARE NOT MANDATED, ALTHOUGH IT IS
9 ALWAYS HELPFUL. IT WAS NOT DONE. BUT THIS IS, IN MY VIEW, A
10 REQUIRED PART OF A SENTENCING ANALYSIS.

11 5G1.1, PARTICULARLY SUBDIVISION A, READS AS FOLLOWS:
12 WHERE THE STATUTORILY AUTHORIZED MAXIMUM SENTENCE IS LESS THAN
13 THE MINIMUM OF APPLICABLE GUIDELINE RANGE, THE STATUTORILY
14 AUTHORIZED MAXIMUM SENTENCE SHALL BE THE GUIDELINE SENTENCE.

15 IGNORED BY THE PARTIES AND PROBATION IS 5G1.1 --
16 RATHER THE PARTIES, I SHOULD SAY. WELL, THE DEFENSE DIDN'T
17 REALLY GET INTO THIS PORTION OF THE ANALYSIS. BUT THE
18 GOVERNMENT AND PROBATION MERELY STACKED, THAT IS APPLIED
19 CONSECUTIVELY, THE STATUTORY MAXIMUMS FOR THE COUNTS OF
20 CONVICTION, ASSUMING THAT IT WAS APPROPRIATE TO RUN ALL COUNTS
21 CONSECUTIVELY AND DESIGNATED THE TOTAL -- IN THIS CASE 80
22 YEARS -- AS THE COMBINED ADVISORY GUIDELINE RANGE. AND I
23 THINK THIS IS WHERE I DISAGREE GREATLY WITH THE ANALYSIS.

24 IF WE LOOK TO 5G1.2 -- AND ONCE AGAIN PLEASE INDULGE
25 ME, LADIES AND GENTLEMEN -- PARTICULARLY D, BECAUSE THIS IS

1 WHERE THE TERM TOTAL PUNISHMENT IS REFERRED TO. IT READS:
2 IF THE SENTENCE IMPOSED ON THE COUNT CARRYING THE HIGHEST
3 STATUTORY MAXIMUM IS LESS THAN THE TOTAL PUNISHMENT, THEN THE
4 SENTENCE IMPOSED ON ONE OR MORE OF THE OTHER COUNTS SHALL RUN
5 CONSECUTIVELY, BUT ONLY TO THE EXTENT NECESSARY TO PRODUCE A
6 COMBINED SENTENCE EQUAL TO THE TOTAL PUNISHMENT. IN ALL OTHER
7 RESPECTS SENTENCE ON ALL COUNTS SHALL RUN CONCURRENTLY, EXCEPT
8 TO THE EXTENT OTHERWISE REQUIRED BY LAW.

9 I BELIEVE THAT PROBATION AND THE GOVERNMENT GOT
10 TRIPPED UP IN TRYING TO DEFINE THE TERM TOTAL PUNISHMENT FOR
11 PURPOSES OF THIS CASE. A TOTAL PUNISHMENT, BASICALLY, IS
12 DEFINED IN THE COMMENTARY. AND IF YOU LOOK AT APPLICATION
13 NOTE 1 TO 5G1.1 YOU WILL SEE THAT TOTAL PUNISHMENT ESSENTIALLY
14 IS DEFINED AS THAT WHICH IS DETERMINED BY THE COURT AFTER
15 DETERMINING THE COMBINED OFFENSE LEVEL AND THE CRIMINAL
16 HISTORY CATEGORY AND DETERMINING THE DEFENDANT'S ADVISORY
17 GUIDELINE RANGE. IT IS TO BE DETERMINED AFTER THE GUIDELINE
18 ANALYSIS BUT OBVIOUSLY BEFORE SENTENCING, WHICH IS WHEN TOTAL
19 PUNISHMENT COMES INTO PLAY.

20 NO COMBINED GUIDELINE RANGE EQUALS 80 YEARS IN THIS
21 CASE, OR FOR THAT MATTER LIFE, FOR THESE COUNTS. 80 YEARS IS
22 JUST A MECHANICAL ADDING OF ALL STATUTORY MAXIMUMS
23 CONSECUTIVELY, WITHOUT DETERMINING WHAT THE ADJUSTED COMBINED
24 OFFENSE LEVEL IS FOR ALL OF THESE COUNTS.

25 ALL THIS MEANS, ESSENTIALLY, IS WHERE THERE ARE

1 MULTIPLE COUNTS, IF THE HIGHEST STATUTORY MAXIMUM IS GOING TO
2 BE LESS THAN TOTAL PUNISHMENT, THEN THE COURT IS TO RUN THE
3 OTHER COUNT OR COUNTS CONSECUTIVELY TO THE HIGHEST STATUTORY
4 MAXIMUM TO A POINT EQUAL TO THE TOTAL SENTENCE, AND THEN
5 CONCURRENT AFTER THAT.

6 LET ME GIVE YOU AN EXAMPLE THAT WE DEAL WITH SO
7 OFTEN IN THIS DISTRICT.

8 LET'S ASSUME THAT WE ARE DEALING WITH TRANSPORTATION
9 OF ILLEGAL ALIENS IN THIS HYPOTHETICAL, OR THIS EXAMPLE, AND
10 THE STATUTORY MAXIMUM FOR THAT IS FIVE YEARS OR 60 MONTHS.

11 WE ARE ALSO DEALING WITH AN OFFENSE OF CONVICTION
12 CONSISTING OF MAKING A FALSE STATEMENT TO A FEDERAL OFFICER.
13 LET'S SAY THE STATUTORY MAXIMUM FOR THAT IS FIVE YEARS.

14 FURTHER IN THIS HYPOTHETICAL CIRCUMSTANCE THE
15 GUIDELINE RANGE FOR THESE TWO OFFENSES, AND DRIVEN BY AN
16 ELEVATED CRIMINAL HISTORY CATEGORY, LET US SAY, IS 70 TO 87
17 MONTHS.

18 IN WHOLE THAT EXCEEDS THE FIVE-YEAR STATUTORY
19 MAXIMUM FOR EACH COUNT OF CONVICTION. LET US SAY THE COURT
20 DETERMINES THAT A 70-MONTH CUSTODIAL SENTENCE WOULD BE THE
21 PROPER SENTENCE. THEN WHAT THE COURT WOULD DO, WITH RESPECT
22 TO COUNT 1, WOULD BE TO IMPOSE THE 60 MONTHS, THE STATUTORY
23 MAXIMUM FOR COUNT 1. AND THEN WITH RESPECT TO COUNT 2, 10
24 MONTHS CONSECUTIVE TO COUNT 1 FOR A TOTAL OF 70 MONTHS, AND
25 THEN THE REMAINDER OF THAT CONCURRENT.

1 SO THAT IS ALL THAT THESE SECTIONS STATE. BUT IN
2 THAT SENSE -- THAT IS IN THE HYPOTHETICAL USED SPECIFICALLY IN
3 5G1.1 OR IN MY HYPOTHETICAL -- YOU ARE DEALING WITH A TOTAL
4 PUNISHMENT OF 70 MONTHS, AND WORKING WITH MULTIPLE COUNTS
5 WHERE YOU SIMPLY CAN'T JUSTIFIABLY AND MECHANICALLY STACK THE
6 STATUTORY MAXIMUMS TO ARRIVE AT AN ADVISORY GUIDELINE RANGE OR
7 TOTAL PUNISHMENT. THEREFORE, BEFORE DEPARTURE REQUESTS OF
8 MR. MOALIN ARE CONSIDERED, THE APPROPRIATE ADVISORY GUIDELINE
9 RANGE WOULD BE THE STATUTORY MAXIMUMS FOR EACH OF THESE COUNTS
10 OF CONVICTION, SPECIFICALLY FOR COUNTS 1, 2, 4 AND 5 15 YEARS
11 EACH, AND FOR COUNT 3 IT WOULD BE 20 YEARS.

12 THE DEFENSE HAS REQUESTED TWO DEPARTURES, WITH A
13 FALSE ASSUMPTION THAT THE DEFENDANT'S ADJUSTED GUIDELINE RANGE
14 IS LIFE. THAT WAS REFERRED TO IN THE SENTENCING MEMORANDUM IN
15 A COUPLE OF DIFFERENT PLACES. BUT I WOULD REFER THE PARTIES,
16 AND OBVIOUSLY THE REVIEWING COURT, A CIRCUIT COURT, TO PAGE
17 DOUBLE I OF THE DEFENDANT'S SENTENCING MEMORANDUM AND ALSO
18 PAGE 8 OF THE SENTENCING MEMORANDUM.

19 A REFERENCE IS MADE TO REDUCING THE CRIMINAL HISTORY
20 CATEGORY FROM A VI TO A I. A REFERENCE IS MADE, ALSO ANOTHER
21 DEPARTURE REQUEST, TO REDUCE THE RANGE DUE TO A COMBINATION OF
22 CIRCUMSTANCES, BASICALLY CHARITABLE AND COMMUNITY ENDEAVORS AS
23 WELL AS OTHER EQUITABLE CIRCUMSTANCES.

24 YOU KNOW, GIVEN THE EXTREME DISSONANCE BETWEEN THE
25 ADVISORY GUIDELINES BEFORE APPLICATION OF 5G1.1, BEFORE

1 APPLICATION OF 5G1.1 AND THE STATUTORY MAXIMUM CAPS, A PROPER
2 SENTENCING ANALYSIS, OF NECESSITY, MUST RELY, IN MY VIEW,
3 PRINCIPALLY ON A 3553(A) ANALYSIS.

4 FOR EXAMPLE, GETTING BACK TO THE REQUESTED
5 DEPARTURES HERE. EVEN IF THE COURT GRANTED DEFENDANT'S
6 REQUEST TO DEPART ON CRIMINAL HISTORY CATEGORY VI TO A I,
7 UNDER THE TABLE, ASSUMING A TOTAL OFFENSE LEVEL OF 43, THE
8 SENTENCING RANGE WOULD STILL CALL FOR LIFE AND THE STATUTORY
9 MAXIMUMS WOULD BE UNAFFECTED.

10 PERHAPS I CAN SAY, IN THIS CASE, THAT NO OTHER CASE
11 I HAVE HAD EXPERIENCE WITH HAS BEEN LESS INFORMED BY A
12 GUIDELINE ANALYSIS THAN THIS ONE, EXCEPT INsofar AS THE
13 BEDROCK PRINCIPLE OR PRINCIPLES OF 5G1.1 ARE CONCERNED. AND
14 SO REALLY THIS IS A CASE THAT HAS TO LOOK TO 3553(A),
15 PRINCIPALLY.

16 I DON'T KNOW IF THE DEFENSE IS EVEN STILL REQUESTING
17 DEPARTURES ON CRIMINAL HISTORY AND A COMBINATION OF
18 CIRCUMSTANCES WITHIN THE CONTEXT OF A GUIDELINE ANALYSIS WHERE
19 5G1.1 COMES INTO PLAY, AND WHERE THE STATUTORY MAXIMUMS ARE
20 LEAGUES SHORT OF THE UNMITIGATED AND DRACONIAN ADVISORY
21 GUIDELINE RANGE OF LIFE BEFORE THE BREAKING POWER OF 5G1.1.

22 BUT IF THESE DEPARTURE REQUESTS ARE BEING ADVANCED,
23 EVEN WITH THIS ANALYSIS AND THAT BREAKING POWER UNDER 5G1.1, I
24 WOULD DENY THE DEPARTURE REQUESTS IN THE DISCRETION OF THE
25 COURT.

1 AS I HAVE SAID, IT IS FAR MORE APPROPRIATE FOR ME TO
2 PROCEED UNDER 3553(A) FACTORS THAN COMPLETELY EVISCERATING THE
3 GUIDELINES, AND OBVIOUSLY 5G1.1 MITIGATES EVISCERATION IN THAT
4 SENSE.

5 MR. COLE: YOUR HONOR --

6 THE COURT: ULTIMATELY -- GO AHEAD, MR. COLE.

7 MR. COLE: JUST MORE FOR PURPOSES OF THE RECORD THAN
8 ANYTHING ELSE, I JUST WANT TO NOTE THAT THE UNITED STATES DOES
9 DISAGREE WITH THE COURT'S, I GUESS, APPLICATION AND
10 INTERPRETATION OF 5G1.1, 5G1.2.

11 WE DON'T THINK -- 5G1.1 ONLY APPLIES IN CASES OF A
12 SINGLE COUNT OF CONVICTION, WE BELIEVE. SO I DON'T THINK IT
13 IS NECESSARY TO BELABOR THE POINT, JUST WANT TO NOTE FOR THE
14 RECORD WE BELIEVE WE DID PROPERLY CALCULATE THE GUIDELINE
15 RANGES.

16 OBVIOUSLY, BASED ON OUR OWN PRESENTATION AT
17 SENTENCING AND OUR SENTENCING PAPERS, WE OURSELVES WERE NOT
18 VIEWING OUR RECOMMENDATION AS WEDDED TO THE GUIDELINES IN THIS
19 CASE BECAUSE, REASONS YOUR HONOR STATED, THIS MAY BE AN
20 UNUSUAL CASE FOR APPLICATION OF THE GUIDELINES. BUT WE DO
21 BELIEVE THAT OUR CALCULATION WAS CORRECT UNDER 5G1.2 AND
22 APPLICATION NOTE 1, AND THAT 5G1.1 ONLY APPLIES IN A CASE OF A
23 SINGLE COUNT OF CONVICTION.

24 WITH THAT WE WILL SUBMIT. I APOLOGIZE FOR
25 INTERRUPTING YOUR LINE OF THOUGHT THERE, YOUR HONOR.

1 **THE COURT:** IF YOU TAKE A LOOK AT 5G, 5G1.1, 5G1.2,
2 THEY SPEAK TO MULTIPLE COUNTS OF CONVICTION. THERE IS NO
3 QUESTION ABOUT THAT, IN MY VIEW. HOWEVER, THE MOST IMPORTANT
4 SENTENCING DECISION I AM MAKING AT THIS TIME MUST CONSIST OF
5 WHETHER THE CUSTODIAL SENTENCES FOR THE VARIOUS COUNTS OF
6 CONVICTION WOULD BE IMPOSED CONCURRENTLY, CONSECUTIVELY, OR
7 PART CONCURRENT AND CONSECUTIVELY.

8 THAT IS A VERY, VERY IMPORTANT CONSIDERATION FOR
9 THIS CASE FOR ALL DEFENDANTS. AND I CERTAINLY INTEND MY
10 REMARKS RELATED TO WHAT I VIEW TO BE A PROPER GUIDELINE
11 ANALYSIS TO THE OTHER TWO DEFENDANTS WHO WILL BE SENTENCED
12 THIS MORNING, BOTH OF WHOM ARE HERE. COUNSEL ARE HERE,
13 OBVIOUSLY, LISTENING TO ALL OF THIS. I WOULD HOPE THAT I
14 WOULDN'T HAVE TO REPEAT CHAPTER AND VERSE OF WHAT I SAID THUS
15 FAR ABOUT WHAT I BELIEVE TO BE A PROPER GUIDELINE ANALYSIS
16 HERE.

17 AGAIN, THE WRITTEN SUBMISSIONS OF THE PARTIES AND
18 PROBATION DON'T REALLY COME TO EXPRESS GRIPS WITH THE
19 IMPORTANT CONSIDERATIONS RELATING TO CONCURRENT VERSUS
20 CONSECUTIVELY. THERE MIGHT BE AN IMPLIED ARGUMENT THERE
21 BECAUSE THE GOVERNMENT IS REQUESTING A FRACTION OF WHAT IT
22 BELIEVES TO BE THE ADVISORY GUIDELINE RANGE OF 80 YEARS. THE
23 GOVERNMENT IS REQUESTING, OR RECOMMENDING, 26 YEARS, AND
24 OBVIOUSLY THE DEFENSE SOMETHING LIKE THIS.

25 BUT I DIGRESS A BIT BY EVEN MENTIONING 3553(A) HERE.

1 ONCE AGAIN, GETTING BACK TO THE GUIDELINE ANALYSIS AND
2 BUTTONING THAT UP, I WOULD DENY, IN THE COURT'S DISCRETION,
3 THE DEPARTURE REQUESTS MADE. AND I WOULD FIND THAT THE
4 ADVISORY GUIDELINE RANGE WOULD BE AS FOLLOWS FOR EACH COUNT OF
5 CONVICTION, AS I STATED PREVIOUSLY: 15 YEARS FOR EACH OF THE
6 FOLLOWING COUNTS, 1, 2, 4 AND 5, AND 20 YEARS FOR COUNT 3.

7 WITH RESPECT TO THE 3553(A) ANALYSIS. THE NATURE
8 AND CIRCUMSTANCES OF THE OFFENSES ARE VERY SERIOUS AS THEY
9 CONSISTED OF THE PROVIDING OF SUPPORT FOR AND THE BUTTRESSING
10 A CAMPAIGN OF TERROR BY AL-SHABAAB, CONSISTING OF TARGETED
11 BOMBINGS, ASSASSINATIONS, MURDER AND MAYHEM, ALL FOR THE
12 PURPOSE OF DISRUPTING AND DETERRING, DEFEATING THE LEGITIMATE
13 TRANSITIONAL FEDERAL GOVERNMENT FORCES AND EFFORTS TO BRING
14 ORDER TO SOMALIA AT THAT PARTICULAR POINT IN TIME.

15 MR. MOALIN'S ACTIONS WERE PARTICULARLY AGGRAVATED,
16 IN MY VIEW, BECAUSE HE NOT ONLY COMMITTED THESE OFFENSES, HE
17 MAINTAINED DIRECT AND CONTINUING CONTACT WITH ADEN AYROW, THE
18 INFAMOUS AND HIGH RANKING MEMBER, TERRORIST LEADER OF
19 AL-SHABAAB WHO WAS ULTIMATELY TAKEN OUT BY A U.S. CRUISE
20 MISSILE IN MID 2008.

21 I THINK MR. MOALIN'S PERSONAL INVOLVEMENT WITH
22 AL-SHABAAB WENT SO FAR AS CONSPIRING DIRECTLY WITH AYROW FOR
23 THE USE OF MR. MOALIN'S HOME IN MOGADISHU AS A HAVEN FOR
24 AL-SHABAAB FIGHTERS AND THE PLACE WHERE BOMBS AND OTHER
25 WEAPONS COULD BE HIDDEN.

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1 MR. MOALIN PLOTTED AND PLANNED FOR FINANCIAL SUPPORT
2 OF AL-SHABAAB BY REACHING OUT TO OTHERS TO RAISE FUNDS FOR
3 AL-SHABAAB. AND HE WAS CERTAINLY THE LINK FOR TRANSMISSION OF
4 FUNDS ULTIMATELY TO AL-SHABAAB THROUGH THE SHIDAAL EXPRESS.
5 IN SHORT, HE WAS AN OPERATIONS OFFICER. HE WAS FUNCTIONING ON
6 SEVERAL DIFFERENT LEVELS AND WAS AL-SHABAAB'S CONTACT AND
7 ADVOCATE FOR THIS PARTICULAR AREA, THIS REGION HERE, FOR THE
8 ENTERPRISE OF FINANCIAL SUPPORT FOR SOMALIA TERRORISTS, AND
9 AL-SHABAAB IN PARTICULAR, DURING THE TIME CHARGED AND THE
10 COUNTS WITH WHICH HE HAS BEEN CONVICTED. I THINK HIS OVERALL
11 ROLE WAS CLEARLY AGGRAVATED.

12 IT IS IN THE AREA OF HISTORY AND CHARACTERISTICS,
13 HOWEVER, WHERE THERE ARE SUBSTANTIAL EQUITIES FOR MR. MOALIN.
14 AS I SAID, I REVIEWED ALL OF THE MANY, MANY LETTERS OF SUPPORT
15 FOR MR. MOALIN.

16 BEFORE WE GET TO THAT I DO RECOGNIZE THAT MR. MOALIN
17 IS A 36-YEAR-OLD MAN. HE MAY BE 37 AT THIS POINT, BUT I STILL
18 THINK 36 AT THIS TIME. BORN AND SPENDING HIS EARLY LIFE IN
19 MOGADISHU, EXPERIENCING THE RAVAGES OF WAR-TORN SOMALIA.
20 THOSE EXPERIENCES HAVE BEEN DESCRIBED IN THE WRITTEN MATERIALS
21 SUBMITTED TO ME, ALSO MENTIONED BY MR. MOALIN HERE TODAY
22 PERSONALLY.

23 HE IS A NATURALIZED CITIZEN OF THE UNITED STATES.
24 MODEST EDUCATION, FROM WHAT I COULD DETERMINE. VOCATIONAL,
25 SOME VOCATIONAL EDUCATION. AND AS A CAB DRIVER FOR MANY YEARS

1 IN THIS AREA.

2 GETTING BACK TO THE FAMILY AND COMMUNITY.
3 OBVIOUSLY, MR. MOALIN IS A FAMILY MAN, DEDICATED FAMILY MAN,
4 WITH MUCH SUPPORT, MUCH SUPPORT BY HIS COMMUNITY HERE. HE HAS
5 A GREAT DEAL OF FRIENDS, OBVIOUSLY, BOTH HERE AND IN SOMALIA,
6 AS THESE LETTERS ATTEST TO.

7 I AM AWARE OF THE CHARITABLE -- THE EXTENSIVE
8 CHARITABLE ACTIVITIES ON THE PART OF MR. MOALIN, SEPARATE AND
9 APART FROM HIS HAVING SUPPORTED AL-SHABAAB DURING THIS PERIOD
10 OF TIME.

11 THESE ACTIVITIES HAVE BEEN EXTENSIVE IN NATURE, FROM
12 PROVIDING SUPPORT, FINANCIAL SUPPORT, FOR DROUGHT RELIEF AND
13 EDUCATION IN SOMALIA TO SUPPORTING INDIVIDUALS HERE WITH HIS
14 GENEROSITY.

15 THE EDUCATION OF YOUTH WAS RAISED TODAY, AND
16 SPECIFICALLY THE EDUCATION OF YOUNG WOMEN. AND THAT CERTAINLY
17 CANNOT BE GAINSAID.

18 ACTUALLY, AS I RECALL, I THINK THE EQUITIES FOR
19 MR. MOALIN WERE SUMMED UP PRETTY NICELY IN PARAGRAPHS 165
20 THROUGH 171. AND I THINK THAT -- I THINK I COVERED JUST ABOUT
21 ALL OF THOSE MATTERS.

22 I AM AWARE OF THE HEALTH ISSUES THAT MR. MOALIN HAD.
23 I KNOW THAT THERE IS SOME RESIDUAL ISSUE OR ISSUES RELATIVE TO
24 THE WOUNDS, THE WAR WOUNDS THAT HE SUFFERED. THE HEART
25 CIRCUMSTANCES ARE MATTERS OF RECORD, AND I THINK LARGELY

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1 RESOLVED.

2 OF COURSE, I AM AWARE OF HIS WIFE'S CIRCUMSTANCES,
3 HIS WIFE AND CHILDREN. I THINK ALL CHILDREN IN SOMALIA --
4 WIFE AND CHILDREN ALL IN SOMALIA, BUT MR. MOALIN DOES SEE THEM
5 FROM TIME TO TIME, OR DID SEE THEM FROM TIME TO TIME.
6 CERTAINLY MORE OFTEN BEFORE THIS CASE WAS FILED, AND THEN
7 AFTER.

8 I THINK TRULY THIS IS A MAN -- I SAY THIS
9 RESPECTFULLY, THIS IS A MAN CAPABLE OF BOTH HUMANITARIAN
10 VIRTUE AND COLLABORATION WITH AN ORGANIZATION AND INDIVIDUALS
11 THAT WERE INVOLVED IN TERRORISM.

12 I THINK THE SUBTEXT OF A GOOD DEAL OF WHAT HAS BEEN
13 SAID, WHAT HAS BEEN ARGUED ON BEHALF OF MR. MOALIN TODAY --
14 AND I DON'T MEAN TO DIMINISH IT IN ANY WAY BY REDUCING IT.
15 BUT I THINK THE SUBTEXT OF WHAT HAS BEEN ARGUED HAS BEEN UNTIL
16 WE HAVE WALKED A MILE IN MR. MOALIN'S SHOES WE SIMPLY CANNOT
17 UNDERSTAND WHAT HE HAS BEEN THROUGH PERSONALLY AND WHAT HIS
18 COUNTRY HAS BEEN THROUGH ON A NATIONAL SCALE FOR THE LAST
19 DECADES. THAT WE CANNOT APPRECIATE THE HORROR, NOR CAN WE
20 UNDERSTAND THE INSTINCTS THAT MAY HAVE LED MR. MOALIN,
21 ULTIMATELY, TO MAKE THE CHOICES HE HAS MADE. AND I UNDERSTAND
22 THAT, I UNDERSTAND THE ARGUMENTS THAT HAVE BEEN MADE IN THAT
23 REGARD.

24 ANOTHER CONSIDERATION THAT MITIGATES HERE, SLIGHTLY,
25 I SAY -- I EMPHASIZE SLIGHTLY, IS EVIDENCE OF SUPPORT FOR

1 AL-SHABAAB EVEN BEFORE ITS CLASSIFICATION, ITS FEBRUARY OF '08
2 CLASSIFICATION AS A FOREIGN TERRORIST ORGANIZATION WHICH
3 BECAME PUBLIC, AS MR. COLE REMINDED US, IN MARCH OF '08.

4 THERE IS EVIDENCE OF THAT FINANCIAL SUPPORT BEFORE,
5 SO IN A SENSE THE HABIT -- THE HABIT WAS ALREADY FORMED, IF
6 YOU WILL, BEFORE THE TERRORIST ORGANIZATION AND CERTIFICATION
7 WERE ISSUED.

8 I HAVE NO DOUBT THAT MR. MOALIN HAS BEEN TRAGICALLY
9 SCARRED BY THE CONSTANT CIVIL WAR OF HIS COUNTRY AND THE
10 INCESSANT INTERMITTING CONFLICT THAT HAS RIDDEN THAT COUNTRY
11 FOR SUCH A LONG PERIOD OF TIME BETWEEN CLANS, GOVERNMENT
12 FORCES AND THE LIKE.

13 BUT ULTIMATELY THESE EXPERIENCES, WHETHER PERSONAL
14 TO MR. MOALIN OR ENDEMIC IN SOMALI GOVERNANCE, CANNOT JUSTIFY
15 SUPPORTING TERRORISTS AND TERRORIST ORGANIZATIONS FROM THIS
16 COUNTRY, THE UNITED STATES.

17 THE PERSONAL EQUITIES OF WHICH I SPEAK, AS WELL AS
18 MR. MOALIN'S PERSONALLY PRODUCTIVE HISTORY IN TERMS OF
19 EMPLOYMENT, FAMILY INVOLVEMENT AND SUPPORT ARE, UNFORTUNATELY,
20 IN LARGE MEASURE -- NOT COMPLETE MEASURE BUT LARGE MEASURE --
21 SUBSTANTIALLY OFFSET BY THE AGGRAVATING NATURE OF MR. MOALIN'S
22 INVOLVEMENT IN THESE OFFENSES.

23 OBVIOUSLY, THE SENTENCING PURPOSES, THE MOST
24 RELEVANT SENTENCING PURPOSES OF PROMOTING RESPECT FOR U.S.
25 LAWS, PROSCRIBING TERRORISM AND THE SUPPORTING OF FOREIGN

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1 TERRORISTS AND FOREIGN TERRORIST ORGANIZATIONS, AS WELL AS
2 PROTECTION OF THE PUBLIC FROM THIS KIND OF ACTIVITY, AND
3 DETERRENCE, BOTH SPECIFIC AND GENERAL, ARE PRIMARY IN THIS
4 ANALYSIS.

5 SENTENCING CHOICES IN THIS CASE MUST SUPPORT THESE
6 HIGHLY RELEVANT CONSIDERATIONS, AND ULTIMATELY WILL. THERE
7 ARE NO ALTERNATIVES TO CUSTODY, IN MY VIEW, THAT WOULD
8 BUTTRESS THESE MOST RELEVANT SENTENCING PURPOSES; AND MOREOVER
9 ANY OTHER OPTION, OTHER THAN CUSTODY, IN MY VIEW.

10 I REALIZE PEOPLE AREN'T ARGUING FOR ANYTHING OTHER
11 THAN CUSTODY, BUT IN MY VIEW THERE ARE NO OPTIONS OTHER THAN
12 CUSTODY. IN THIS CASE THOSE OPTIONS WOULD BE UNWARRANTED.

13 FOR ALL OF THESE REASONS STATUTORILY -- STATUTORY
14 CUSTODIAL MAXIMUM OF EACH OF THE CRIMES OF CONVICTION FOR
15 COUNTS 1, 2, 4 AND 5 OF 15 YEARS, IN MY VIEW, WOULD BE FAIR,
16 JUST AND REASONABLE, WOULD BUTTRESS THE RELEVANT SENTENCING
17 PURPOSES I HAVE BEEN DISCUSSING, AND WOULD BE THE LEAST AMOUNT
18 OF TIME TO BE NECESSARY FOR THE OTHER TO SUBSERVE THE PURPOSES
19 I HAVE BEEN DISCUSSING. FOR THESE REASONS A CUSTODIAL
20 SENTENCE OF 15 YEARS -- 15 YEARS FOR EACH OF THOSE COUNTS
21 WOULD ULTIMATELY BE APPLIED.

22 I WOULD ALSO, LOOKING AT THE COUNT 3, IMPOSE A
23 CUSTODIAL SENTENCE OF 15 YEARS, THAT BEING THE MONEY
24 LAUNDERING COUNT. THAT WOULD BE FAIR, JUST AND REASONABLE FOR
25 THE SAME REASONS. I UNDERSTAND THAT THAT REPRESENTS A

1 DOWNWARD VARIANCE OF FIVE YEARS FROM THE SENTENCING MEMORANDUM
2 AND GUIDELINE RANGE OF -- THE STATUTORY MAXIMUM GUIDELINE
3 RANGE OF 20 YEARS, I SHOULD SAY.

4 ULTIMATELY, THESE SENTENCES FOR THESE COUNTS SHOULD
5 BE IMPOSED CONCURRENTLY, WITH THE EXCEPTION THAT I AM GOING TO
6 DISCUSS WITH RESPECT TO COUNT 4. THEY SHOULD BE IMPOSED
7 CONCURRENTLY BECAUSE THEY REPRESENT, ESSENTIALLY, THE SAME
8 HARM, AND WERE A CONTINUING COURSE OF CRIMINAL CONDUCT. AND
9 IN THE CASE OF COUNT 3 THE MEANS BY WHICH THE OTHER COUNTS
10 WERE EXECUTED, THE MEANS TO SECURE A COMMON GOAL OF THE
11 CONTINUING COURSE OF CONDUCT.

12 ACCORDINGLY, PURSUANT TO THE 1984 SENTENCING REFORM
13 ACT, IT IS THE JUDGMENT AND SENTENCE OF THE COURT THAT AS TO
14 COUNT 1 DEFENDANT MOALIN BE, AND HEREBY IS, COMMITTED TO THE
15 CUSTODY OF THE BUREAU OF PRISONS FOR A TERM OF 15 YEARS
16 CUSTODY.

17 FURTHER, IT IS THE JUDGMENT AND SENTENCE OF THE
18 COURT THAT DEFENDANT MOALIN, AS TO COUNT 2, BE, AND HEREBY IS,
19 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS FOR A TERM
20 OF 15 YEARS, WITH THAT TERM IMPOSED CONCURRENTLY WITH THE TERM
21 OF THE 15 YEARS FOR COUNT 1.

22 WITH RESPECT TO COUNT 3, IT IS THE FURTHER JUDGMENT
23 AND SENTENCE OF THE COURT DEFENDANT MOALIN BE, AND HEREBY IS,
24 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS FOR A TERM
25 OF 15 YEARS ON COUNT 3, RUN CONCURRENTLY WITH THE COUNTS FOR 1

1 AND 2.

2 AND WITH RESPECT TO COUNT 5 IT IS THE JUDGMENT AND
3 SENTENCE OF THE COURT THAT MR. MOALIN BE, AND HEREBY IS,
4 COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS FOR A TERM
5 OF 15 YEARS, WITH THAT TERM IMPOSED CONCURRENTLY TO THE TERMS
6 FOR 1, 2 AND 3.

7 WITH RESPECT TO THE SENTENCE FOR COUNT 4, IT IS THE
8 JUDGMENT AND SENTENCE OF THE COURT THAT MR. MOALIN BE, AND
9 HEREBY IS, COMMITTED TO THE CUSTODY OF THE BUREAU OF PRISONS
10 FOR A TERM OF 15 YEARS WITH THREE YEARS OF THAT TIME IMPOSED
11 CONSECUTIVELY TO THE TERMS FOR 1, 2, 3 AND 5, AND 12 YEARS OF
12 THAT TERM IMPOSED CONCURRENTLY WITH THE 15-YEAR TERMS FOR
13 COUNTS 1, 2, 3 AND 5 FOR A TOTAL OF 18 YEARS IN CUSTODY.

14 COUNT 4, IN MY VIEW, IS AN OFFENSE OF A DIFFERENT
15 MAGNITUDE. DEFENDANT MOALIN PERSONALLY OFFERED, IN MY VIEW,
16 TO ADEN AYROW HIS HOME, STRATEGIZED AS TO HOW IT COULD BE USED
17 IN THE ONGOING CAMPAIGN OF TERROR BY AL-SHABAAB.

18 MR. MOALIN COUNSELED ADEN AYROW ON HOW TO BURY BOMBS
19 ON THE PROPERTY, AS WELL AS OTHER MUNITIONS. AND THIS, IN MY
20 VIEW, WENT BEYOND MERE FINANCIAL SUPPORT AND ENTERED INTO THE
21 REALM OF A DIFFERENT TYPE OF SUPPORT, WHICH IS DESERVING OF
22 THIS PARTIALLY-RUN CONSECUTIVE SENTENCE.

23 CONTINUING ON.

24 NO FINE IS IMPOSED FOR ANY COUNT OF CONVICTION. A
25 SPECIAL ASSESSMENT OF \$100 IS ASSESSED WITH RESPECT TO COUNT 1

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1 AND WAIVED WITH RESPECT TO THE OTHER COUNTS FOR A TOTAL OF
2 \$100 IN SPECIAL ASSESSMENTS.

3 FOLLOWING COMPLETION OF A CUSTODIAL SENTENCE IN THIS
4 CASE MR. MOALIN IS TO BE PLACED UPON A THREE-YEAR PERIOD OF
5 SUPERVISED RELEASE, WITH THE STANDARD CONDITIONS OF
6 SUPERVISION APPLYING AS WELL AS THE FOLLOWING SPECIAL
7 CONDITIONS: HE SUBMIT TO A SEARCH OF HIS PERSON, PROPERTY,
8 VEHICLE, ABODE OR RESIDENCE AT A REASONABLE TIME, UNDER
9 REASONABLE CIRCUMSTANCES BY A PROBATION OFFICER.

10 JUST TO BE SURE. I DIDN'T SEE ANY CONDITIONS OF
11 SUPERVISED RELEASE SET FORTH IN THE ORIGINAL P.S.R. AM I
12 CORRECT?

13 **THE PROBATION OFFICER:** YOU ARE CORRECT, YOUR HONOR,
14 RIGHT. THEY ARE IN THE ADDENDUM, NOT IN THE ORIGINAL P.S.R.

15 **THE COURT:** OKAY.

16 SO THE FIRST SPECIAL CONDITION WOULD BE SEARCH.

17 FURTHER, THAT MR. MOALIN REPORT ALL VEHICLES OWNED
18 OR OPERATED OR IN WHICH HE HAS AN INTEREST TO PROBATION;
19 FURTHER, THAT HE PROVIDE COMPLETE DISCLOSURE OF PERSONAL AND
20 BUSINESS FINANCIAL RECORDS TO PROBATION AS REQUESTED; FOURTH,
21 THAT HE RESOLVE ALL OUTSTANDING WARRANTS WITHIN 60 DAYS, IF
22 THAT WARRANT OF WHICH I SPOKE EARLIER IS STILL EXTANT AT THE
23 TIME HE IS RELEASED; AND FINALLY, THAT HE NOT KNOWINGLY
24 ASSOCIATE WITH TERRORIST OR NONTERRORIST ORGANIZATIONS.

25 MR. MOALIN, YOU HAVE AN ABSOLUTE RIGHT TO APPEAL

1 FROM THE CONVICTIONS ON THESE COUNTS, AS WELL AS THE SENTENCE
2 IMPOSED FOR THEM. IF YOU WISH TO FILE AN APPEAL, A NOTICE OF
3 APPEAL MUST BE FILED BY YOU WITHIN 14 DAYS OF TODAY. YOU MUST
4 SPECIFY WHAT IT IS YOU ARE APPEALING FROM. THAT NOTICE OF
5 APPEAL MUST BE FILED WITH THE CLERK OF THIS COURT, THAT IS THE
6 U.S. DISTRICT COURT FROM THE SOUTHERN DISTRICT OF CALIFORNIA,
7 RATHER THAN WITH THE NINTH CIRCUIT COURT OF APPEALS. YOU
8 SHOULD KEEP THE APPELLATE AUTHORITIES ADVISED OF YOUR
9 WHEREABOUTS AT ALL TIMES WHILE YOUR CASE IS ON APPEAL SO THAT
10 IF THEY NEED TO BE IN TOUCH WITH YOU THEY MAY BE IN TOUCH WITH
11 YOU.

12 IF YOU CANNOT AFFORD THE SERVICES OF LEGAL
13 REPRESENTATION WHILE YOUR CASE IS ON APPEAL THEN THOSE
14 SERVICES WILL CONTINUE, THEY WILL BE PROVIDED TO YOU AT NO
15 COST TO YOU.

16 SIR, DO YOU UNDERSTAND WHAT I TOLD YOU ABOUT YOUR
17 APPELLATE RIGHTS IN THIS CASE?

18 **DEFENDANT MOALIN:** YES. YES, YOUR HONOR.

19 **THE COURT:** I WANT TO EMPHASIZE A COUPLE THINGS FOR
20 COUNSEL, JUST TO MAKE SURE.

21 THE TOTAL CUSTODIAL TIME IN THIS CASE IS A TERM OF
22 18 YEARS COMMITMENT TO THE BUREAU OF PRISONS. THERE IS A
23 THREE-YEAR PERIOD OF SUPERVISED RELEASE WITH RESPECT TO EACH
24 OF THESE COUNTS IMPOSED CONCURRENTLY. A \$100 SPECIAL
25 ASSESSMENT, IN TOTAL. NO FINES.

1 AND IF YOU COME FORWARD, MR. DRATEL, I WILL HAVE YOU
2 PROVIDED WITH A COPY OF THE TERMS AND CONDITIONS OF SUPERVISED
3 RELEASE. AND IF YOU WOULD KINDLY PROVIDE THOSE TO YOUR CLIENT
4 AT THIS TIME.

5 **MR. DRATEL:** I WILL. THANK YOU, YOUR HONOR.

6 **THE COURT:** ANYTHING FURTHER FROM YOU, MR. DRATEL?

7 **MR. DRATEL:** YES, YOUR HONOR. ONE -- AND I
8 UNDERSTAND THE COURT'S INTENTION FULLY, BUT I THINK JUST IN
9 TERMS OF THE LANGUAGE. ON COUNT 5, 15 YEARS CONCURRENTLY WITH
10 1, 2 AND 3, BUT IT IS ALSO CONCURRENT WITH COUNT 4 TO THE
11 EXTENT --

12 **THE COURT:** YES.

13 **MR. DRATEL:** I DON'T THINK THE COURT SAID THAT.

14 **THE COURT:** IF I DIDN'T SAY IT, THEN I APPRECIATE
15 THE CORRECTION. OBVIOUSLY ALL OF THE COUNTS ARE TO BE RUN
16 CONCURRENT WITH ALL OTHER COUNTS. AND THEN WITH RESPECT TO
17 COUNT 4, 12 YEARS OF THAT COUNT IS TO BE RUN CONCURRENT WITH
18 THE OTHER COUNTS AND THREE YEARS CONSECUTIVELY TO THE OTHER
19 COUNTS.

20 **MR. DRATEL:** THANK YOU, YOUR HONOR.

21 **THE COURT:** ANY PARTICULAR REQUEST FOR A REGION?

22 **MR. DRATEL:** YES, YOUR HONOR. A DESIGNATION TO AN
23 AREA AS CLOSE AS POSSIBLE TO SAN DIEGO.

24 **THE COURT:** TO THE WESTERN REGION?

25 **MR. DRATEL:** YES.

1 **THE COURT:** THAT RECOMMENDATION WILL BE MADE.

2 MR. COLE.

3 **MR. COLE:** NOTHING FURTHER, YOUR HONOR.

4 **THE COURT:** ANYTHING FURTHER?

5 **MR. COLE:** NO, THANK YOU.

6 **THE COURT:** I NOTICED THAT YOU WERE -- PERHAPS YOU
7 WERE COMMUNICATING ON THIS 5G1.1 ISSUE. I DON'T KNOW. BUT IF
8 THERE IS ANYTHING FURTHER, WE ARE GOING TO TAKE A RECESS FOR
9 15 MINUTES OR SO, GIVE THE REPORTER A BREAK AND OTHERS AS
10 WELL. IF THERE IS ANYTHING FURTHER YOU WOULD LIKE TO ADD I
11 WOULD BE HAPPY TO HEAR YOU WITH RESPECT TO THE OTHER MATTERS
12 WE HAVE SET THIS MORNING.

13 **MR. COLE:** OKAY. THAT IS FINE. WE MAY BRIEFLY
14 ADDRESS IT THEN, AFTER THE BREAK AND THE OTHER MATTERS. WE
15 COULD ADDRESS IT NOW, IF YOU WANT.

16 **THE COURT:** NO, THAT IS FINE. YOU CAN ADDRESS IT --
17 YOU CAN ADDRESS IT AT THE TIME OF ALLOCUTION IF YOU WISH.

18 **MR. COLE:** THANK YOU, YOUR HONOR.

19 **THE COURT:** VERY GOOD. WE ARE IN RECESS FOR 15
20 MINUTES AT THIS TIME. THANK YOU.

21 (RECESS)

22 **THE COURT:** OKAY. MS. MORENO, ARE YOU READY TO
23 PROCEED?

24 LET THE RECORD SHOW THAT MR. MOALIN HAS RETURNED. I
25 THOUGHT MR. MOALIN WAS REQUESTING TO LEAVE. SOMETHING WAS

1 LOST IN TRANSLATION. SO LET THE RECORD REFLECT MR. MOALIN,
2 MR. MOHAMUD, AND MR. ISSA DOREH ARE ALL PRESENT HERE.

3 AND WE ARE HAPPY TO HAVE YOU HERE, MR. MOALIN.

4 **MR. DRATEL:** YOUR HONOR, IF I MAY. I AM INFORMED
5 THAT I SHOULD, JUST FOR THE RECORD, OBJECT TO THE SENTENCE AS
6 UNREASONABLE, JUST FOR THE RECORD, TO PRESERVE APPELLATE
7 RIGHTS.

8 **THE COURT:** SURE.

9 DO YOU WISH TO OBJECT, MR. COLE? AN EQUAL
10 OPPORTUNITY.

11 **MR. COLE:** YOUR HONOR, WE PERSIST IN OUR VIEW OF THE
12 GUIDELINE CALCULATIONS. BUT, AGAIN, WE HAVE ALREADY MADE THAT
13 STATEMENT BRIEFLY. IF YOUR HONOR WANTS TO DISCUSS IT ANY
14 FURTHER.

15 **THE COURT:** NO, I DON'T THINK SO. IT IS RATHER
16 MOOT, ISN'T IT?

17 **MR. COLE:** I DON'T THINK IT IS DRIVING A LOT HERE AT
18 THIS POINT. I DO KNOW THAT JUST -- AGAIN, JUST FOR PURPOSES
19 OF THE RECORD.

20 IF THERE IS AN OBJECTION TO THE RECORD, I JUST WANT
21 TO MAKE CLEAR IF IT IS PROCEDURAL OR SUBSTANTIVE OR BOTH. IF
22 IT WAS A PROCEDURAL OBJECTION I JUST WANT TO MAKE SURE THAT
23 STATUS -- YOUR HONOR COULD CORRECT IT, IF NECESSARY.

24 **MR. DRATEL:** SUBSTANTIVE.

25 **THE COURT:** I ASSUMED IT WAS SUBSTANTIVE. I THINK

1 TO THE EXTENT YOU HAVE A CONCERN, MR. COLE, IT MAY BE
2 PROCEDURAL.

3 **MR. COLE:** YES.

4 **THE COURT:** BUT ALL WITH THE UNDERSTANDING THAT THE
5 GUIDELINE ANALYSIS HERE IN THIS CASE, OR THE GUIDELINES, JUST
6 DON'T PROVIDE AN AWFUL LOT IN TERMS OF ULTIMATELY DETERMINING
7 WHAT AN APPROPRIATE SENTENCE IS. I MEAN, YOU NEED TO GO
8 THROUGH THE STEPS AND ALL THAT IS REQUIRED. BUT AS I
9 INDICATED PREVIOUSLY, THIS IS A 3553(A) CASE MORE THAN
10 ANYTHING ELSE. AND ALL PARTIES AGREE WITH THAT. YOU ARE
11 CERTAINLY FREE TO DISAGREE IF THAT BE THE CASE.

12 SO NOW WE ARE ON TO MR. MOHAMUD.

13 MS. MORENO, ARE YOU READY TO PROCEED WITH
14 SENTENCING?

15 **MS. MORENO:** YES, YOUR HONOR.

16 **THE COURT:** MR. MOHAMUD, ARE YOU READY TO PROCEED
17 WITH SENTENCING, SIR?

18 **DEFENDANT MOHAMUD:** YES, YOUR HONOR.

19 **THE COURT:** ALL RIGHT. VERY GOOD.

20 MR. MOHAMUD, HAVE YOU READ THE PROBATION REPORT AND
21 THE ADDENDUM TO THE PROBATION REPORT?

22 **DEFENDANT MOHAMUD:** YES, YOUR HONOR.

23 **THE COURT:** ALL RIGHT. VERY GOOD.

24 COUNSEL, BEFORE YOU GET GOING WITH THE ALLOCUTIONS
25 AND ALL, I HAVE READ EVERYTHING.

1 MR. MOHAMUD, YOU CAN CERTAINLY BE SEATED AT THIS
2 TIME.

3 I READ AND CONSIDERED CAREFULLY THE PROBATION
4 REPORT, THE OBJECTIONS TO THE P.S.R. FILED BY BOTH SIDES, ONCE
5 AGAIN, THE ADDENDUM TO THE P.S.R. THE SENTENCING MEMORANDUM
6 AND EXHIBITS AND LETTERS SUBMITTED ON THE DEFENDANT'S BEHALF,
7 THE GOVERNMENT'S SENTENCING MEMORANDUM, THE SENTENCING SUMMARY
8 CHARTS. I HAVE CONSIDERED THE NATURE AND CIRCUMSTANCES OF THE
9 OFFENSES AND HISTORY AND CHARACTERISTICS OF MR. MOHAMUD, AS
10 WELL AS THE ADVISORY GUIDELINES AND THE STATUTORY PURPOSES OF
11 SENTENCING.

12 YOU KNOW, BEFORE WE GET STARTED I, UNFORTUNATELY,
13 SPENT A SIGNIFICANT AMOUNT OF TIME ON THE GUIDELINE ANALYSIS
14 AND IDENTIFYING WHERE I COULD HAVE RECEIVED MORE HELP FROM
15 PROBATION AND THE PARTIES. AND I WENT TO SOME LENGTHS TO DO
16 THAT AND TO COME UP WITH WHAT I BELIEVE TO BE THE PROCEDURALLY
17 CORRECT GUIDELINE ANALYSIS.

18 I WOULD RATHER NOT GO THROUGH ALL OF THAT AGAIN, MS.
19 MORENO, MR. GHAPPOUR, MR. COLE, IF THERE BE AN UNDERSTANDING
20 THAT THE GENERAL REMARKS I HAD ABOUT HOW THE GUIDELINES IMPACT
21 THIS CASE ARE INCORPORATED INTO THE SENTENCINGS AND MY
22 ALLOCUTIONS FOR MR. MOHAMUD AND MR. DOREH AS WELL.

23 **MS. MORENO:** YES, YOUR HONOR. I WAS GOING TO SAY,
24 WORKING BACK, I AGREE WITH THE COURT. THE COURT DOES NOT NEED
25 TO REPEAT YOUR ANALYSIS WITH RESPECT TO WHATEVER SENTENCE IS

1 IMPOSED ON MR. MOHAMUD.

2 I WOULD ALSO AGREE WITH THE COURT THAT THE
3 GUIDELINES HERE --

4 **THE COURT:** LET ME JUST GET EVERYONE'S ASSENT BEFORE
5 WE PROCEED FURTHER.

6 MR. GHAPPOUR.

7 **MR. GHAPPOUR:** NO OBJECTION.

8 **THE COURT:** IS THAT AGREEABLE TO YOU?

9 **MR. GHAPPOUR:** YES, YOUR HONOR.

10 **THE COURT:** MR. COLE?

11 **MR. COLE:** SURE, YOUR HONOR.

12 **THE COURT:** I JUST DON'T WANT TO ENGAGE IN ANOTHER
13 EXERCISE OF TOTAL TEDIUM HERE, BUT I WILL HIGHLIGHT WHAT I
14 NEED TO HIGHLIGHT FOR THIS SPECIFIC CASE AND ALSO FOR MR.
15 DOREH'S CASE.

16 MS. MORENO.

17 **MS. MORENO:** THANK YOU, YOUR HONOR.

18 AND AS A FINAL NOTE ON THE GUIDELINES DISCUSSION, WE
19 AGREE WITH THE COURT THAT IT DOES NOT HELP OR INFORM THE COURT
20 IN THE LAWFUL AND JUST SENTENCE SUFFICIENT BUT NOT GREATER
21 THAN THAT THE COURT NEEDS TO IMPOSE WITH RESPECT TO MY CLIENT,
22 MR. MOHAMUD.

23 I WOULD SAY TO THE COURT THAT THE FEW ISSUES --
24 BEFORE I GET INTO THE PERSONAL HISTORY OF MR. MOHAMUD, THAT
25 THIS IS NOT A CHALLENGE TO THE VERDICT, THAT I AM NOT

1 REARGUING THE MERITS. BUT I DO BELIEVE THAT I AM ENTITLED TO
2 TALK ABOUT RELATIVE CULPABILITY IN SOME FASHION. BUT I WILL
3 NOT BE TALKING ABOUT REVISITING THE TRIAL RECORD IN THIS CASE,
4 YOUR HONOR.

5 AND SO WITH THAT SAID, THE COURT -- AND I WOULD ALSO
6 ADOPT MR. DRATEL'S COMMENTS WITH RESPECT TO HIS INITIAL
7 COMMENTS WHEN HE FIRST ADDRESSED THE COURT ABOUT DETERRENCE.
8 I HAVE SOME OTHER ISSUES WITH RESPECT TO DETERRENCE THAT ARE
9 UNIQUE TO MR. MOHAMUD THAT I WILL ADDRESS.

10 BUT I THINK THAT, AGAIN, SOMETIMES IT IS EASIER,
11 SOMETIMES IT IS MORE DIFFICULT TO GO AFTER SOMEONE IN THIS
12 PARTICULAR SETTING. I AM HOPING I CAN REFOCUS THE COURT ON
13 MR. MOHAMUD, WHAT HE DID, WHAT HE IS RESPONSIBLE FOR. AND I
14 AM NOT GOING TO REPEAT THE COMMENTS THAT MR. DRATEL MADE WITH
15 RESPECT TO MY CLIENT EXERCISING HIS RIGHT TO A TRIAL. I DON'T
16 THINK I NEED TO DO THAT WITH YOUR HONOR.

17 BUT CLEARLY YOUR HONOR HAS SEEN, AS WAS POINTED OUT,
18 THAT EVERY SINGLE DAY THAT THIS COURT HAS BEEN IN SESSION,
19 EITHER IN HEARINGS OR IN THE TRIAL SETTING, THAT THE SUPPORT
20 FROM THE COMMUNITY HAS BEEN PERSISTENT, PERVASIVE AND
21 CONSISTENT.

22 MR. MOHAMUD OCCUPIES A DIFFERENT POSITION IN THIS
23 CASE BECAUSE, AS THIS COURT KNOWS, AND AS THE GOVERNMENT
24 ARGUES, THAT HIS POSITION AS AN IMAM SUBJECTS HIM TO SOME
25 UNIQUE CHARACTERISTICS. WE ARE GOING TO TALK ABOUT THAT.

1 THE COURT HAS READ ALL THE PAPERS, THE PLETHORA OF
2 LETTERS THAT WERE SUBMITTED ON HIS BEHALF. AND I THINK IF THE
3 COURT NOTED, SOME OF THE LETTERS WERE FORMAL AND TYPEWRITTEN,
4 SOME OF THE LETTERS WERE IN THE HANDWRITING OF SOME MEMBERS OF
5 THE COMMUNITY. SOME OF THEM WERE NOT SIGNED, SOME OF THEM THE
6 WORDS WERE MISSPELLED. WE COULD HAVE SUBMITTED 100 MORE.

7 I WILL TELL THE COURT, WHEN I FIRST ENTERED THIS
8 CASE, WHICH WAS AFTER ANY BAIL DETERMINATIONS, I INHERITED
9 FROM PREVIOUS COUNSEL A BOOK, AND THE BOOK WAS ENORMOUS. AND
10 IN THE BOOK WERE THE APPLICATIONS OF ALMOST 200 MEMBERS OF THE
11 COMMUNITY, NOT JUST HERE BUT ACROSS THE COUNTRY, OF PEOPLE WHO
12 WERE WILLING TO PUT UP THEIR HOUSES FOR BAIL FOR MR. MOHAMUD.

13 I KNEW WHEN I SAW THAT THAT THIS WAS GOING TO BE A
14 VERY DIFFERENT KIND OF CASE FOR ME. AND I WILL TELL THIS
15 COURT THAT I HAVE BEEN INVOLVED IN A NUMBER OF THESE CASES
16 AROUND THE COUNTRY, AND I TOO HAVE HAD THE PRIVILEGE AND HONOR
17 OF REPRESENTING MR. MOHAMUD. AND HE IS A UNIQUE PERSON IN THE
18 PANOPLY OF PERSONS I HAVE REPRESENTED.

19 HE, AS THE COURT KNOWS, IS A DEVOTED FATHER AND
20 HUSBAND. HIS WIFE, DEAKA, IS IN THE AUDIENCE. TWO OF HIS
21 SONS ARE IN THE AUDIENCE. HIS OLDEST SON, ABDULAH, IS IN THE
22 AUDIENCE, AND HIS OTHER SON.

23 WOULD YOU LIKE TO STAND UP.

24 AND HIS WIFE, DEAKA. AND DEAKA HAS BEEN HERE EVERY
25 SINGLE --

1 YOU CAN SIT. THANK YOU.

2 HAS BEEN HERE EVERY SINGLE TIME THAT WE HAVE BEEN IN
3 SESSION.

4 AS WE KNOW FROM NOT ONLY THE PAPERS BUT ALSO IN THE
5 TRIAL EVIDENCE, THAT MR. MOHAMUD WAS BORN IN SOMALIA, WHICH IS
6 A COUNTRY THAT REALLY HAS NEVER BEEN IN PEACE IN HIS LIFETIME.
7 HE LEFT WHEN HE WAS 20 YEARS OLD TO ESCAPE THE VIOLENCE. HE
8 MADE A DECISION AT THAT TIME THAT HE WASN'T GOING TO STAY AND
9 PICK UP ARMS. HE WANTED A BETTER LIFE, A SAFER LIFE. AND HIS
10 JOURNEY LED HIM THROUGH REFUGEE CAMPS, AS THE COURT KNOWS, AND
11 FINALLY BROUGHT HIM TO AMERICA 13 YEARS AGO THIS MONTH WHERE
12 HE WAS GRANTED REFUGEE STATUS. AND IT IS A STATUS THAT HE
13 CURRENTLY MAINTAINS, YOUR HONOR.

14 HIS FAMILY SITUATION IS -- IT IS -- WHAT I WANT TO
15 SAY, YOUR HONOR, BECAUSE I HAVE THOUGHT ABOUT HIS FAMILY AND I
16 MET HIS FAMILY, IT IS EXTRAORDINARY. HE HAS 11 CHILDREN. I
17 THINK THE LETTERS -- SOME OF THE LETTERS THAT THE COURT READ
18 REFER TO ONE OF THE CHILDREN, A DAUGHTER, THAT IS SEVERELY
19 AUTISTIC TO THE EXTENT, YOUR HONOR, SHE DOES NOT SPEAK AND
20 REQUIRES 24-HOUR CARE AND SUPERVISION.

21 THIS RESPONSIBILITY HAD BEEN SHARED BETWEEN DEAKA,
22 HER MOTHER, AND MR. MOHAMUD, HER FATHER. AND I THINK THAT A
23 LOT OF THE LETTERS REFER TO THE EXTRAORDINARY RELATIONSHIP
24 THAT A FATHER HAD WITH HIS DAUGHTER.

25 HIS CHILDREN ARE -- AS ANY PARENT WOULD WANT, HIS

1 CHILDREN ARE THE BEST TESTAMENT OF WHO THE MAN IS. I OFTEN
2 SAY THAT TOO. I HAVE ONE CHILD AND I OFTEN SAY TO HER WHEN
3 YOU GO OUT IN THE WORLD YOU REPRESENT ME SO YOU NEED TO DRESS
4 APPROPRIATELY, AND WHAT HAVE YOU. AND PERHAPS WASH SOME OF
5 THAT MAKEUP OFF OF YOUR FACE.

6 BUT ANYWAY, HERE MR. MOHAMUD'S CHILDREN ARE A
7 WONDERFUL TESTAMENT TO HIM. FROM HIS OLDEST CHILD ABDULAHA,
8 WHO WORKS AND IS IN COLLEGE, TO THE YOUNGEST WHO WAS FOUR
9 MONTHS OLD, ONLY, WHEN MR. MOHAMUD WAS ARRESTED. ALL OF THE
10 CHILDREN, BESIDES THE LITTLE ONES, ARE IN SCHOOL AND ARE
11 PRODUCTIVE.

12 WHAT HAS HAPPENED HERE TO MR. MOHAMUD AND TO HIS
13 FAMILY, I THINK THIS COURT KNOWS, HAS BEEN TOTAL DEVASTATION,
14 COMPLETE DEVASTATION FOR THEM. THE LOSS -- NOT ONLY THE LOSS
15 OF MR. MOHAMUD AS A HUSBAND BUT THE LOVE OF A FATHER TO ONE'S
16 CHILDREN. THE UNCONDITIONAL LOVE AND PROTECTION THAT ONE
17 EXPECTS FROM ONE'S FATHER IS NOW DELIVERED PIECEMEAL,
18 DELIVERED PIECEMEAL THROUGH THE BARS OF THE PRISON WINDOW, AND
19 IS ALSO REGULATED IN TERMS OF HOW OFTEN THEY CAN SEE EACH
20 OTHER. THIS IS A DEVASTATING BLOW TO A FAMILY THAT, ABOVE
21 ALL, IS VERY TIGHT-KNIT AND SUPPORTED EACH OTHER, IN WHICH
22 MR. MOHAMUD PLAYED AN ABSOLUTELY CENTRAL ROLE.

23 THE GOVERNMENT, IN ITS PAPERS, TALKED ABOUT
24 MR. MOHAMUD'S INFLUENCE. AND I THINK THAT WHAT I WANT TO SAY
25 ABOUT THAT IS THAT MR. MOHAMUD'S INFLUENCE IS REAL, IT IS

1 ENDEARING AND IT IS EXEMPLIFIED IN THE VARIOUS LETTERS THAT
2 WERE SUBMITTED ON HIS BEHALF.

3 THE KIND OF INFLUENCE THAT, AS THE COURT KNOWS,
4 MOTHERS WROTE ABOUT TEENAGERS BEING COUNSELED AWAY FROM DRUGS
5 AND ALCOHOL. ABOVE ALL ELSE, ABOUT THE IMPORTANCE AND
6 ENCOURAGEMENT OF EDUCATION. AND THE EDUCATION IS ACTUALLY,
7 FOR MR. MOHAMUD, A VERY HEARTFELT AND SPECIAL AREA.

8 AS THE COURT KNOWS, IN THE P.S.R. REPORT THERE IS
9 MENTION OF MR. MOHAMUD'S INVOLVEMENT IFTIN CHARTER SCHOOL.
10 AND IFTIN CHARTER SCHOOL IS A SCHOOL THAT HE CO-FOUNDED,
11 RAISED THE FUNDS FOR. THE SCHOOL OPENED IN 2006. IT IS A
12 CHARTER SCHOOL. IT IS OPEN FOR ALL CHILDREN FROM SAN DIEGO
13 COUNTY. IT IS ABOUT A 10-MINUTE RIDE FROM HERE. AND THEY
14 HAVE ALMOST 500 CHILDREN IN THE SCHOOL NOW, GRADES K THROUGH
15 8.

16 THIS IS AN ENDEARING LEGACY THAT WILL CONTINUE NO
17 MATTER WHAT HAPPENS TO MR. MOHAMUD. AND I SUSPECT, BESIDES
18 HIS FAMILY, IT IS HIS VERY PROUDEST ACHIEVEMENT.

19 REGARDLESS OF THE VERDICTS, YOUR HONOR, EVERYONE IN
20 THE COMMUNITY WHO WROTE, WHO KNOWS MR. MOHAMUD, KNOWS HIM NOT
21 TO SUPPORT EXTREMIST IDEOLOGY. WHAT HIS WORK HAS SHOWN IN THE
22 COMMUNITY WAS HOW TO IMPROVE THE LIVES OF HIS PEOPLE, HOW TO
23 BE A BETTER CITIZEN, HOW TO COME TOGETHER.

24 THERE IS, RESPECTFULLY, NO EVIDENCE THAT HE
25 ENCOURAGED DIVISION, THAT HE ENCOURAGED SUPPORT OF AN

1 EXTREMIST IDEOLOGY, RESPECTFULLY, AND THAT HE SUPPORTED
2 VIOLENCE.

3 LET ME JUST SAY SOMETHING ABOUT THE CALLS IN THIS
4 CASE, VERY BRIEFLY.

5 THERE ARE -- THERE WERE 11 CALLS THAT WERE SUBMITTED
6 IN THE RECORD THAT INVOLVED MY CLIENT. WHAT WE KNOW IS THAT
7 THE PLETHORA OF PHONE CALLS IN THIS CASE INVOLVED MR. MOALIN
8 TALKING TO A NUMBER OF PEOPLE. MY CLIENT WAS DISCUSSED MORE
9 THAN HE WAS HEARD IN THIS CASE. AND THE UNIVERSE OF CALLS
10 THAT DEALT WITH MR. MOHAMUD, WHERE HE IS ON THE PHONE AND
11 SPEAKING, BEGAN, IF THE COURT REMEMBERS, IN DECEMBER OF 2007
12 AND ENDED SOME TIME IN MAY OF 2008.

13 AND I JUST WANT TO REFER BACK TO THE INITIAL CALL,
14 WHICH I HAD READ TO THE JURY, WHICH I BELIEVE SPEAKS TO WHO
15 MR. MOHAMUD WAS AND WHAT HE BELIEVED ABOUT WHAT WAS HAPPENING
16 IN HIS COUNTRY.

17 AND IN THAT CALL HE CONDEMNED THE CONDUCT OF THE
18 YOUTH. WE KNOW THAT THE YOUTH, ACCORDING TO THE GOVERNMENT'S
19 EXPERT, WAS AL-SHABAAB. HE CONDEMNED THEM BECAUSE HE SAID
20 THEY SLAUGHTER ANYONE THEY CAPTURE AND THAT IS NOT GOOD. AND
21 HE SAID HE BELIEVED IN UNITY. AND THAT ONE COULD BE WITH
22 ANYONE WITHOUT TAKING THEIR BELIEFS.

23 AND HE THEN HE SAID THE COUNTRY IS FOR ALL OF US,
24 THE SCHOLARS, THE UNEDUCATED AND THE GENERAL PUBLIC.

25 NOW, WITHOUT BELABORING THESE POINTS, AND MINDFUL OF

1 THE VERDICTS, THESE AND OTHER CALLS PRESENTED BY THE
2 GOVERNMENT SHOW THAT WE BELIEVE THAT MR. MOHAMUD DID NOT
3 SUPPORT THE EXTREME IDEOLOGY OF AL-SHABAAB.

4 I WILL SAY THIS ABOUT MR. MOALIN. WHAT WE KNOW IS
5 THAT MR. MOHAMUD NEVER SPOKE TO SHEIKALOW. WHAT WE KNOW FROM
6 THE EVIDENCE AT TRIAL IS THAT MR. MOHAMUD NEVER SPOKE TO AN
7 ADEN AYROW. THERE IS NO EVIDENCE THAT HE KNEW THEM. BUT
8 THERE IS DISCUSSION ABOUT MR. MOHAMUD. AND WE ARE ASKING,
9 WHEN THE COURT IS LOOKING AT THAT IN DETERMINING AND
10 FASHIONING A JUST SENTENCE, THAT THAT NOT BE HELD AGAINST HIM.

11 I WANT TO TALK A BIT ABOUT DEPORTATION. I THINK
12 THAT -- I KNOW THAT MR. MOHAMUD IS SUBJECT TO I.N.S. DETAINER,
13 THAT HE HAS REFUGEE STATUS, AND THAT HE MOST SURELY WILL BE
14 DEPORTED WHEN HE FINISHES WHATEVER SENTENCE IS IMPOSED ON HIM.

15 I DON'T THINK IT IS HYPERBOLE, YOUR HONOR, TO SAY
16 THAT WHEN THAT HAPPENS, HIS LIFE WOULD BE IN DANGER. DEFENSE
17 COUNSEL WAS INFORMED THAT FARAH YARE WAS MURDERED ON THE
18 STREETS OF MOGADISHU BY MEMBERS OF AL-SHABAAB.

19 AS YOUR HONOR PREVIOUSLY OBSERVED, SOMALI DOES NOT
20 HAVE ANY SIGNIFICANT, FUNCTIONING EXECUTIVE OR JUDICIAL
21 PROCESS. THIS IS A COUNTRY THAT SETS NEW STANDARDS FOR
22 DECLINE, AND THIS IS A PLACE WHERE MR. MOHAMUD MAY GO BACK TO.

23 BUT BESIDES THAT, A DEPORTATION WOULD PROBABLY
24 RESULT IN A PERMANENT EXILE OF MR. MOHAMUD FROM HIS FAMILY,
25 YOUR HONOR, FROM THIS COUNTRY THAT I BELIEVE HIS 10 YEARS IN

1 THIS COUNTRY EXEMPLIFIED THAT ALL OF HIS WORK AND ALL OF HIS
2 GOOD WORKS AND HIS MESSAGE, MOST IMPORTANTLY, WAS TO BE
3 PRODUCTIVE, LAW ABIDING, PEACEFUL AND EDUCATED MEMBERS OF THE
4 SOCIETY.

5 ONE ONLY HAS TO LOOK AT THE WEBSITE OF THE IFTIN
6 CHARTER SCHOOL TO SEE THAT IT IS NONDENOMINATIONAL, IT IS
7 PUBLIC AND IT ENCOURAGES TOLERANCE BUT EMPHASIZES ACADEMIC
8 RIGOR. THAT IS MR. MOHAMUD'S LEGACY.

9 I CAN ANTICIPATE WHAT THE PUSH-BACK OF THE
10 GOVERNMENT WILL BE WITH RESPECT TO MR. MOHAMUD'S INFLUENCE AND
11 CLOUD, AND WE RESPECTFULLY DISAGREE ABOUT THAT INFLUENCE, AND
12 ASK THE COURT TO CONSIDER THE INFLUENCE THAT MEMBERS OF THE
13 COMMUNITY HAVE TOLD YOU ABOUT.

14 I AM NOT GOING TO ADDRESS THE GUIDELINES ISSUE WITH
15 THE COURT BECAUSE I AGREE WITH THE COURT, IT DOES NOT INFORM
16 THE CASE.

17 I, TOO, COME FROM A JURISDICTION WHERE RECOMMENDED
18 SENTENCES ARE USUALLY NOT WITHIN OUR PURVIEW, SO I, TOO, DID
19 NOT RECOMMEND A SENTENCE. I WILL APOLOGIZE FOR MY PAPERS
20 LACKING IN WHAT OBVIOUSLY WAS AN IMPORTANT AND NECESSARY
21 GUIDELINES ANALYSIS THAT THE COURT HAS POINTED OUT.

22 **THE COURT:** I APPRECIATE THAT. I DON'T THINK I
23 UNDERSTOOD THAT, ACTUALLY. MR. DRATEL TOUCHED UPON THAT, YOU
24 TOUCHED UPON THAT. AND PERHAPS IT IS JUST THE NATURE OF THE
25 CASE THAT HAD JUST ABOUT EVERYONE NOT PUTTING THE EMPHASIS SO

1 MUCH ON A TRADITIONAL GUIDELINE ANALYSIS, AND FOR REASONS I
2 CERTAINLY UNDERSTAND.

3 **MS. MORENO:** I GUESS I WOULD -- MY CLIENT DOES WANT
4 TO ADDRESS THE COURT.

5 **THE COURT:** SURE.

6 **MS. MORENO:** AND BEFORE I END I WOULD REFOCUS YOUR
7 HONOR WITH RESPECT TO THE RELATIVE CULPABILITY, WHAT
8 MR. MOHAMUD ACTUALLY DID IN THIS CASE AND DIDN'T DO. AND I
9 WOULD ASK THE COURT TO IMPOSE A SENTENCE IN CONFORMANCE WITH
10 THE PARSIMONY CLAUSE, SUFFICIENT BUT NOT GREATER. AND A
11 SENTENCE THAT IS JUST.

12 DOES THE COURT HAVE ANY QUESTIONS?

13 **THE COURT:** NO. THANK YOU, MS. MORENO.

14 MR. MOHAMUD, YOU MAY REMAIN SEATED IF YOU WISH. AND
15 YOU DO HAVE AN OPPORTUNITY AT THIS TIME TO MAKE ANY STATEMENT
16 YOU WISH TO MAKE. MY ONLY REQUEST WOULD BE FOR COUNSEL TO
17 PULL A MICROPHONE CLOSER TO MR. MOHAMUD SO THAT HE CAN BE
18 EASILY HEARD BY EVERYONE IN THE COURTROOM, AND PARTICULARLY
19 THE COURT REPORTER.

20 **DEFENDANT MOHAMUD:** GOOD MORNING, YOUR HONOR. I AM
21 HERE TODAY TO BE SENTENCED. AND AFTER I FINISH MY TIME, I
22 WANT TO GO BACK TO SOCIETY AND REUNITE WITH MY FAMILY, RAISE
23 AND EDUCATE MY CHILDREN, WHOM I MISS A LOT, ESPECIALLY
24 SASABEL, WHO IS AUTISTIC.

25 YOUR HONOR, MY FAMILY AND I CAME TO THIS GREAT

1 COUNTRY IN NOVEMBER 2000. THE REASON I CAME HERE WAS NOT TO
2 COMMIT CRIME, IT WAS JUST TO HAVE A BETTER LIFE. AND I GOT A
3 LOT OF GOOD THINGS FROM THIS COUNTRY. THE MAJORITY OF MY
4 CHILDREN WERE BORN IN U.S.A., AND ALL ARE AMERICAN CITIZENS.
5 I WILL NEVER EVER FORGET THE GOOD THINGS AND THE SUPPORT THAT
6 I GET FROM THIS COUNTRY. IF I TRIED TO COUNT, I CANNOT COUNT
7 THEM BECAUSE IT IS A LOT. HOWEVER, ONE DAY I HOPE I CAN PAY
8 BACK IN A POSITIVE WAY SOMETHING TO THIS COUNTRY WHICH HELPED
9 ME A LOT.

10 I BELIEVE THAT REWARD FOR GOOD SHOULD BE GOOD. AS
11 THE LAW SAID IN THE QURAN, IS THERE ANY REWARD FOR GOOD OTHER
12 THAN GOOD.

13 YOUR HONOR, THERE IS NO DOUBT THAT I WAS CONVICTED,
14 BUT PLEASE NEVER FORGET MY COMMENTS. IN MY HEART I BELIEVE I
15 AM NOT A BAD PERSON, OR A BAD GUY. I AM NOT A DANGER TO
16 SOCIETY, NOR A THREAT TO ANYONE. WHEN I WAS ON OUTSIDE I
17 DENOUNCED THE VIOLENCE AND THE BRUTALITY OF AL-SHABAAB IN MY
18 LECTURE, SOMALI COMMUNITY AS WELL AS IN MY DECLARATIONS WITH
19 OTHER FELLOW SOMALIS.

20 TODAY I AM CONDEMNING THE VIOLENCE AND IDEOLOGY OF
21 TERRORISTS THAT AL-SHABAAB REPRESENT. IN MY HEART I DO NOT
22 BELIEVE IN THAT KIND OF IDEOLOGY, AND I WILL NEVER, EVER
23 SUPPORT IT.

24 YOUR HONOR, PLEASE CONSIDER THAT MY CONDUCT AND
25 SERVICES THAT I HAD PERFORMED FOR MY COMMUNITY FROM 2000 TO

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1 2010 DEFINE WHO I AM. AND MY GOOD ACTS THAT I DID FOR MY
2 COMMUNITY, IT WILL BE REMEMBERED FOREVER.

3 YOUR HONOR, I PROMISE TODAY, WHEN I AM RELEASED I
4 WILL BE A LAW ABIDING CITIZEN, AND PRODUCTIVE MEMBER OF
5 SOCIETY. AND I WILL NEVER, EVER BE IN A SITUATION LIKE THIS,
6 FOR IT IS A NIGHTMARE. I NEVER DREAM IN MY LIFE THAT I AGAIN
7 FACE SOMETHING LIKE THAT. REGARDLESS OF THE OUTCOME OF YOUR
8 HONOR'S DECISION, YOU HAVE MY COMPLETE RESPECT.

9 THANK YOU, YOUR HONOR.

10 **THE COURT:** THANK YOU, MR. MOHAMUD.

11 MS. HAN.

12 **MS. HAN:** YOUR HONOR, I JUST WANT TO BEGIN WITH
13 SOMETHING THAT CAME FROM THIS DEFENDANT'S SENTENCING PAPERS,
14 AND THAT IS A STATEMENT TO THE EFFECT OF THAT ESSENTIALLY A
15 MESSAGE HAD BEEN SENT THAT ACTIONS BELIEVED TO BE HUMANITARIAN
16 IN NATURE MAY BE VIEWED IN A CRIMINAL LIGHT AND SUBJECT TO
17 CRIMINAL PENALTIES.

18 YOUR HONOR, I WANT TO BEGIN THERE, BECAUSE I THINK
19 THAT THAT TRULY MINIMIZES WHAT THIS DEFENDANT DID. THIS
20 DEFENDANT WAS A PERSON WHO SUPPORTED -- AS THE EVIDENCE SHOWED
21 AT TRIAL SUPPORTED AL-SHABAAB, AN ENTITY WHO SENT THREATENING
22 LETTERS TO PEOPLE WHO TRIED TO SUPPORT THE ETHIOPIANS, SHOT
23 PEOPLE OUTSIDE OF THE MOSQUE, AND CONDUCTED SUICIDE BOMBINGS.
24 AS MS. MORENO STATED, HE WAS WELL AWARE OF WHAT THE YOUTH WERE
25 ABOUT.

1 AND CERTAINLY THERE WERE INDIVIDUALS WHO WERE
2 AGAINST ETHIOPIA, BUT THEY WERE NOT ONE AND THE SAME WITH
3 AL-SHABAAB. SO ANY ATTEMPT TO JUSTIFY JUST MERELY TRYING TO
4 SUPPORT ANY ENTITY THAT WAS AGAINST ETHIOPIANS IT IS NOT ONE
5 AND THE SAME TO SUPPORT AL-SHABAAB AND BE AGAINST THE
6 ETHIOPIANS, WHICH IS ESSENTIALLY I THINK WHAT HAS BEEN TRYING
7 TO BE STATED IN SOME OF THIS DEFENDANT'S PAPERS.

8 YOUR HONOR, THIS DEFENDANT IS SOMEBODY WHO LEFT
9 SOMALIA, WAS ABLE TO MAKE IT OUT. WAS ABLE TO MAKE AN
10 EDUCATION AND CAME HERE TO THE UNITED STATES. AND HERE HE
11 BECAME A LEADER HERE IN SAN DIEGO, HE BECAME A RELIGIOUS
12 LEADER AT A MOSQUE HERE IN SAN DIEGO.

13 AND THAT IS SIGNIFICANT IN THE SOMALI COMMUNITY HERE
14 IN THE UNITED STATES BECAUSE THE SOMALI COMMUNITY HERE IN SAN
15 DIEGO IS THE SECOND LARGEST SOMALI COMMUNITY HERE IN THE
16 UNITED STATES, SECOND ONLY TO MINNEAPOLIS.

17 AND HERE IN SAN DIEGO HE BECAME AN IMAM, A RELIGIOUS
18 LEADER, AS INDICATED BY THE MULTIPLE LETTERS THAT WERE
19 PRESENTED BY THE DEFENDANT; BUT HE ALSO BECAME A DUPLICITOUS
20 PERSON.

21 ON THE ONE HAND HE BECAME THE PERSON WHO WAS THE
22 FAMILY MAN, WHO WAS THE IMAM AND HE WAS INVOLVED IN THE
23 COMMUNITY. ON THE OTHER HAND, AS THE EVIDENCE AT TRIAL
24 DEMONSTRATED, HE WAS THE PERSON WHO WAS VERY SECURITY
25 CONSCIOUS AND SAID THAT PHONES WERE PROBLEMATIC.

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1 HE WAS ALSO THAT SAME PERSON WHO HAD THE
2 RELATIONSHIP WITH ABU ZUBEYR, THE EMIR OF AL-SHABAAB THAT WAS
3 SUCH TOUTED BY HIS CO-DEFENDANT. AND LASTLY, HE WAS THE
4 PERSON WHO ADEN AYROW KNEW TO CALL OUT TO THROUGH BASAALY
5 MOALIN TO HAVE SOME ACCOUNTABILITY FOR WHAT WAS HAPPENING IN
6 SAN DIEGO, AND FOR THE MONEY THAT WAS COMING FROM SAN DIEGO TO
7 AL-SHABAAB.

8 YOUR HONOR, MS. MORENO HAS TALKED ABOUT THE
9 CONSEQUENCES FOR THIS DEFENDANT AFTER HIS CONVICTION AND THAT
10 DEPORTATION MAY BE A CONSEQUENCE FOR HIM.

11 YOUR HONOR, IN THIS DISTRICT IN PARTICULAR YOU ARE
12 VERY FAMILIAR WITH DEPORTATION BEING A POSSIBLE CONSEQUENCE,
13 SO WE WOULD ASK THAT WHILE WE UNDERSTAND THAT SOMALIA IS
14 COMPLETELY WAR-RAVAGED, CERTAINLY YOU SEE DEFENDANTS ON A
15 WEEKLY BASIS WHO ARE AFRAID OF THE DRUG CARTELS IN MEXICO OR
16 FOR VARIOUS REASONS ARE TERRIFIED TO GO BACK TO THEIR HOME
17 COUNTRY. SO WE BELIEVE THAT IT WOULD BE -- IT WOULD BRING
18 SOME SENTENCING DISPARITY FOR YOU TO OVER-ACCOUNT FOR THAT
19 POSSIBLE CONSEQUENCE THAT HE WOULD BE DEPORTED FROM THE UNITED
20 STATES.

21 **THE COURT:** MAY I ASK YOU A POINT OF CLARIFICATION
22 ABOUT YOUR ARGUMENT, MS. HAN?

23 **MS. HAN:** YES, YOUR HONOR.

24 **THE COURT:** ARE YOU EQUATING, IN TERMS OF THE
25 COLLATERAL CONSEQUENCES ISSUE, PEOPLE WHO ENTER OR ATTEMPT TO

1 ENTER THIS COUNTRY WITHOUT AUTHORIZATION, SO-CALLED ILLEGALS,
2 WHO ARE THEN RETURNED TO, ALMOST IN ALL CASES MEXICO, DEPORTED
3 OR REMOVED TO MEXICO?

4 **MS. HAN:** NO, YOUR HONOR. I AM ACTUALLY TALKING
5 ABOUT A MORE CLASSIC DEFENDANT HERE IN SAN DIEGO, WHICH IS A
6 DEFENDANT WHO IS A LAWFUL PERMANENT RESIDENT OR -- NOT EVEN A
7 LAWFUL PERMANENT RESIDENT, EVEN A CITIZEN OF MEXICO WHO COMES
8 HERE, DRIVING A CAR, USUALLY, WITH DRUGS. AND FOR VARIOUS
9 REASONS SAYS, YOU KNOW, THERE ARE GOING TO BE COLLATERAL
10 CONSEQUENCES FOR ME AND I AM TERRIFIED TO GO BACK TO MEXICO.

11 **THE COURT:** MORE IMPORTANTLY, YOU ARE DRAWING A
12 PARALLEL, THEN, BETWEEN THIS DEFENDANT AND CASES WHERE
13 DEFENDANTS HAVE LEGAL PERMANENT RESIDENCE, I.E. GREEN CARDS,
14 AND WHERE THEY HAVE ESTABLISHED A LIFE, AND LEAVING OR BEING
15 REMOVED CREATES, OBVIOUSLY, GREAT DISRUPTION FOR THEM
16 PERSONALLY AND FOR THEIR FAMILIES.

17 **MS. HAN:** YES, YOUR HONOR.

18 ADDITIONALLY, YOUR HONOR, WHILE I REALIZE THAT MS.
19 MORENO HAD TALKED ABOUT THE DEFENDANT BEING ORIGINALLY FROM
20 SOMALIA, MY UNDERSTANDING IS THAT HE ACTUALLY WAS ETHIOPIAN
21 AND IS FROM THAT PART OF SOMALIA THAT IS ACTUALLY NOW JIG-JIGA
22 WHICH IS REALLY -- HE WAS BORN IN ETHIOPIA, SO WERE HE TO BE
23 RETURNED TO SOMEPLACE IT WOULD BE TO ETHIOPIA, NOT NECESSARILY
24 SOMALIA, JUST AS A MINOR POINT OF CLARIFICATION.

25 **THE COURT:** I THOUGHT ABOUT THAT AS MS. MORENO WAS

1 SPEAKING, THAT MOST OF THESE GENTLEMEN -- AND I BELIEVE
2 INCLUDING MR. MOHAMUD -- LIVED IN OTHER COUNTRIES OR SOUGHT
3 REFUGEE STATUS IN OTHER COUNTRIES BEFORE COMING TO THE UNITED
4 STATES, NOT JUST SOMALIA. OKAY.

5 **MS. HAN:** YOUR HONOR, JUST SHORTLY, JUST TO WRAP UP.

6 MS. MORENO TALKED ABOUT THAT THE GOVERNMENT WAS OVER
7 EMPHASIZING THE INFLUENCE THAT THE DEFENDANT HAD ON THE
8 COMMUNITY. YOUR HONOR, I DON'T THINK THAT WE CAN OVER
9 EMPHASIZE THAT AT ALL. THAT IS CERTAINLY TO BE SAID FOR,
10 AGAIN, THE NUMBERS OF PEOPLE WHO ARE IN THE AUDIENCE TODAY,
11 THE NUMBERS OF PEOPLE WHO HAVE BEEN IN THE OVERFLOW COURTROOMS
12 IN THE PAST. I DON'T THINK WE CAN OVERSTATE AT ALL THE
13 INFLUENCE THAT HE HAD. HE CAN'T HAVE IT BOTH WAYS. HE
14 CERTAINLY HAD POSITIVE INFLUENCE BUT HE CERTAINLY HAD NEGATIVE
15 INFLUENCE.

16 AND CERTAINLY IN THIS CASE THAT WAS DEMONSTRATED,
17 FOR EXAMPLE, BY THE CALL IN WHICH HE AND BASAALY MOALIN TALKED
18 ABOUT HOLDING THE 20 TO 30 MOST TRUSTED INDIVIDUALS AT THE
19 MOSQUE.

20 SO WITH THAT INFLUENCE AND FOR ALL OF THE OTHER
21 REASONS WE DISCUSSED, WE WOULD SUBMIT ON OUR RECOMMENDATION.

22 **THE COURT:** THANK YOU.

23 MS. MORENO, DID YOU HAVE ANYTHING FURTHER?

24 **MS. MORENO:** THIS CALL, YOUR HONOR, I DIDN'T WANT TO
25 ADDRESS THAT. I JUST BRIEFLY WILL SAY, YOUR HONOR --

1 **THE COURT:** WOULD YOU LIKE TO STAND BY THE LECTERN,
2 MAYBE EASIER TO HEAR YOU.

3 **MS. MORENO:** THIS APRIL 17TH, 2008 CALL THAT THE
4 GOVERNMENT HAS RELIED ON IS A CALL BETWEEN MR. MOALIN AND MY
5 CLIENT. IT IS A CALL WHERE MR. MOALIN SAYS TO MY CLIENT, IF
6 YOU SHOULD HOLD BACK 20 OR 30 TRUSTED PEOPLE AT THE MOSQUE, NO
7 ONE COULD REFUSE YOU.

8 THEY BASE THEIR RECOMMENDATIONS ON -- AND
9 CHARACTERIZE HIS APPARENTLY INSIDIOUS INFLUENCE ON THAT CALL.
10 THE PROBLEM IS THAT THERE IS NO EVIDENCE THAT ANYBODY WAS HELD
11 BACK, OR THAT ANYBODY THAT MR. MOHAMUD SPOKE TO DONATED FUNDS.

12 SO I JUST WANTED TO SAY THAT FOR THE RECORD, YOUR
13 HONOR. I WOULD SUBMIT IT ON MY PAPERS.

14 **THE COURT:** HOW OLD IS YOUR CLIENT AT THIS TIME?

15 **MS. MORENO:** HE IS 41.

16 **THE COURT:** AND I KNOW THE PROBATION REPORT HAD HIM
17 AS BEING BORN IN SOMALIA. BUT APPARENTLY THE PROBATION REPORT
18 NEEDS TO BE CORRECTED IN THAT REGARD.

19 **MS. MORENO:** I AM NOT SURE ABOUT THAT, YOUR HONOR.
20 I THINK WHERE HE WAS BORN AND WHEN HE WAS BORN AT THE TIME WAS
21 SOMALIA.

22 **THE COURT:** ALL RIGHT. DID YOU WANT TO BE -- NOT
23 THAT IT IS PARTICULARLY MATERIAL AT THIS POINT, MS. HAN, BUT
24 THERE DID SEEM TO BE A LITTLE BIT OF A DISCREPANCY THERE.

25 **MS. HAN:** YOUR HONOR, THAT WAS AN OVERSIGHT ON OUR

1 PART THAT WE DIDN'T INCLUDE THAT. JUST OUR INFORMATION FROM
2 HIS IMMIGRATION APPLICATION STATED THAT HE WAS BORN IN
3 JIG-JIGA, WHICH IS IN ETHIOPIA.

4 **THE COURT:** LET ME BEGIN, FIRST OF ALL -- WELL,
5 OBVIOUSLY WE ARE DEALING WITH FOUR COUNTS OF CONVICTION HERE,
6 COUNTS 1, 2, 3 AND 5: FIRST BEING CONSPIRACY TO PROVIDE
7 MATERIAL SUPPORT TO FOREIGN TERRORISTS; THE SECOND BEING A
8 CONSPIRACY TO PROVIDE MATERIALS TO A FOREIGN TERRORIST
9 ORGANIZATION; THE THIRD MONEY LAUNDERING; AND THE FIFTH
10 PROVIDING MATERIAL SUPPORT TO A FOREIGN TERRORIST
11 ORGANIZATION.

12 THERE ARE OBJECTIONS, ONCE AGAIN THERE ARE
13 OBJECTIONS FROM BOTH PARTIES TO THE ORIGINAL PROBATION REPORT.
14 AND SO, AS I DID WITH MR. MOALIN, LET ME START OUT BY
15 RESPONDING TO THOSE OBJECTIONS, WHICH I MUST, EVEN THOUGH THEY
16 MAY NOT BE OF GREAT MOMENT, PARTICULARLY, THOSE DEALING WITH
17 FACTUAL OBJECTIONS.

18 FIRST, WITH RESPECT TO -- NOW I AM USING AS A POINT
19 OF REFERENCE DEFENDANT'S OBJECTIONS TO DRAFT PRESENTENCE
20 REPORT, AS IT IS ENTITLED.

21 WITH RESPECT TO THE OFFENSE CONDUCT, PARAGRAPHS 3 TO
22 55, THERE IS AN OBJECTION TO THE ENTIRETY OF THE OFFENSE
23 CONDUCT. I WOULD NOTE THE OBJECTION, OVERRULE IT, AND
24 INDICATE, OBVIOUSLY, THAT THE DEFENDANT DOES NOT AGREE WITH
25 THE CHARACTERIZATION OF THE OFFENSE CONDUCT AS SET FORTH IN

1 THE PROBATION REPORT.

2 WITH RESPECT TO THE NEXT OBJECTION, AT PARAGRAPH 6
3 OF THE PROBATION REPORT. I WOULD NOTE THAT AND INDICATE THAT
4 IT IS NOT MATERIAL TO ANY SENTENCING CHOICE I WOULD MAKE WITH
5 RESPECT TO THE OBJECTION AT PARAGRAPH 11 OF THE P.S.R. I
6 WOULD NOTE THAT AND OVERRULE IT.

7 WITH RESPECT TO THE OBJECTIONS AT PARAGRAPHS 33
8 THROUGH 35, 41 THROUGH 43 AND 46 THROUGH 47, I WOULD NOTE THEM
9 AND OVERRULE THEM. I REALIZE THAT THEY ARE OBJECTING TO
10 EITHER A CHARACTERIZATION OR REQUESTING A FACTUAL
11 CLARIFICATION.

12 WITH RESPECT TO THE OBJECTION TO PARAGRAPH 48, I
13 WOULD NOTE THAT AND OVERRULE IT. THAT WOULD BE THE FIRST
14 SENTENCE.

15 WITH RESPECT TO THE SECOND SENTENCE, I BELIEVE THAT
16 THE SECOND SENTENCE OF THE OBJECTION TO PARAGRAPH 48, AS THAT
17 OBJECTION IS SET FORTH ON PAGE 4 OF THE OBJECTIONS, WOULD BE A
18 CORRECT STATEMENT, THAT IS AS TO WHAT THE GOVERNMENT
19 STIPULATION WAS.

20 WITH RESPECT TO THE OBJECTION IN PARAGRAPH 49, I
21 WOULD NOTE THAT AND WOULD OVERRULE THE OBJECTION.

22 AND THE SAME WOULD BE WITH RESPECT TO THE OBJECTION
23 AT PARAGRAPH 52 TO THE DEFENDANT'S CHARACTERIZATION OF THAT
24 PARTICULAR REFERENCE IN THE P.S.R.

25 WITH RESPECT TO THE OBJECTION AT PARAGRAPH 54, I

1 WOULD NOTE THAT AND INDICATE IT IS NOT MATERIAL TO ANY
2 SENTENCING CHOICE I WOULD MAKE.

3 WITH RESPECT TO THE OFFENSE LEVEL COMPUTATIONS, ALL
4 OF THE OBJECTIONS THAT FOLLOW, FROM THE BOTTOM OF PAGE 4
5 THROUGH ALL OF PAGE 5 AND THE FIRST FEW LINES OF PAGE 6, I
6 WILL ADDRESS THOSE IN MY OWN ALLOCUTION, RATHER THAN DOING
7 THEM INDIVIDUALLY HERE.

8 WITH RESPECT TO OBJECTIONS TO PERSONAL AND FAMILY
9 DATA, I WOULD NOTE THOSE AND NOTE THAT THESE ARE ACCEPTABLE
10 CLARIFICATIONS, OBVIOUSLY, OR CORRECTIONS.

11 WITH RESPECT TO THE NEXT SECTION DEALING WITH
12 FACTORS WARRANTING A DEPARTURE, I WILL ADDRESS THOSE IN MY
13 ALLOCUTION, AS WELL AS FACTORS WARRANTING A SENTENCE OUTSIDE
14 THE ADVISORY GUIDELINE SYSTEM, AND OBJECTIONS TO THE PROBATION
15 OFFICER'S ANALYSIS.

16 FINALLY, ON PAGE 7, THE OBJECTIONS TO THE SENTENCING
17 RECOMMENDATIONS AND CALCULATIONS, I WOULD ADDRESS IN MY
18 ALLOCUTION.

19 WITH RESPECT TO THE GOVERNMENT'S OBJECTIONS, LARGELY
20 TO THE GROUPING ISSUES ONCE AGAIN. AND TO THE EXTENT THERE
21 WERE ERRORS IN THE MAXIMUM STATUTORY PENALTIES IDENTIFIED IN
22 ONE OR MORE OF THE COUNTS OF CONVICTION, I WILL DEAL WITH
23 THOSE IN MY OWN ALLOCUTION.

24 SO WHAT I WOULD LIKE TO DO IS BEGIN WITH THE SAME
25 GENERAL REMARKS INDICATING THAT, AS WAS THE CASE WITH

1 MR. MOALIN, THE ORIGINAL PROBATION REPORT HAS SET FORTH
2 MULTIPLE GROUP ANALYSIS AND CONCLUDED THE ADVISORY GUIDELINE
3 RANGE WAS LIFE IN CUSTODY, CONCURRENT WITH THE OTHER COUNTS.

4 AND THE GOVERNMENT APPROPRIATELY FILED AN OBJECTION
5 ARGUING THAT THE 20 YEARS OF STATUTORY MAXIMUM FOR COUNT 3 IS
6 WHAT SHOULD HAVE BEEN IDENTIFIED, AND THAT THE TOTAL
7 PUNISHMENT OR ADJUSTED GUIDELINE RANGE FOR ALL COUNTS OF
8 CONVICTION IS 65 YEARS OR 780 MONTHS. I WILL DEAL WITH THOSE
9 ISSUES WHEN I GET INTO THE NUTS AND BOLTS OF A GUIDELINE
10 ANALYSIS.

11 AN ADDENDUM WAS FILED BASICALLY AGAINST STACKING THE
12 COUNTS FOR 65 YEARS OF CUSTODY, AND THE GOVERNMENT IS
13 RECOMMENDING NO LESS THAN 22 YEARS CUSTODY.

14 AND SO THERE IS NO SPECIFIC RECOMMENDATION FROM MS.
15 MORENO FOR THE REASONS SHE INDICATED, AND I CERTAINLY RESPECT
16 THAT, HER PRACTICE IN ANOTHER DISTRICT.

17 TO BEGIN WITH, ONCE AGAIN, IN MY VIEW ALL FOUR OF
18 THESE COUNTS ARE GROUPED UNDER THE GUIDELINE SECTIONS THAT I
19 ENUMERATED EARLIER: 2X1.12 AND 1.5; 2S1.1. AND SPECIFICALLY
20 THE MONEY LAUNDERING COUNT OF COUNT 3 WOULD ALSO BE GROUPED
21 UNDER -- SPECIFICALLY GIVEN THE GUIDANCE OF APPLICATION NOTE 6
22 TO 2S1.1, AND I WON'T GO ANY FURTHER ON THAT.

23 SO PROCEEDING, THEN, WITH THE GUIDELINES AND THE
24 GUIDELINE ANALYSIS. THE BASE OFFENSE LEVEL WOULD BE 33 UNDER
25 THESE -- FOR THESE GROUPED COUNTS, WITH A 12-LEVEL UPWARD

1 ADJUSTMENT UNDER 3A1.4 AS WELL AS AN INCREASE FROM THE
2 CATEGORY I CRIMINAL HISTORY TO CATEGORY VI CRIMINAL HISTORY.

3 AS STATED EARLIER AND WITH RESPECT TO MR. MOALIN, I
4 DO FIND THAT 3A1.4 APPLIES SPECIFICALLY, PARAGRAPHS A AND B,
5 BECAUSE I WOULD FIND THAT THE EVIDENCE DURING THE TRIAL
6 DISCLOSED BEYOND A REASONABLE DOUBT THAT THESE OFFENSES WERE
7 CALCULATED TO INFLUENCE OR AFFECT GOVERNMENTAL ACTIONS OR
8 INTIMIDATION, COERCION BY AL-SHABAAB, A BRUTAL TERRORIST
9 ORGANIZATION. I ALREADY ENUMERATED THE REASONS FOR THAT IN
10 THE EARLIER SENTENCING, I CERTAINLY ADOPT THEM HERE. NO ONE
11 DENIES THAT AL-SHABAAB WAS A PARTICULARLY VIOLENT AND BRUTAL
12 ORGANIZATION. BUT OBVIOUSLY WHAT WAS DONE BY AL-SHABAAB IN
13 SOMALIA IS A MATTER OF RECORD THAT WAS DETAILED IN THE
14 TESTIMONY DURING THE COURSE OF THE TRIAL. AND AGAIN THE
15 GOVERNMENT HAS SALIENTLY POINTED OUT THE DETAILS AT PAGES 9
16 AND 10 OF ITS SENTENCING MEMORANDUM, WHICH I WOULD ADOPT AT
17 THIS POINT IN MY ANALYSIS.

18 I REJECTED THE NOTION THAT THE TRANSITIONAL FEDERAL
19 GOVERNMENT WAS NOT A FUNCTIONING GOVERNMENT. OBVIOUSLY IT WAS
20 OR ATTEMPTING TO FUNCTION AT THE TIME WITH SUPPORT FROM LARGE
21 PORTIONS OF THE SOMALI POPULACE, OTHER COUNTRIES IN THE AREA,
22 CONSTITUENT ELEMENTS OF THE AFRICAN UNION, OF COURSE, WITH THE
23 SUPPORT OF THE UNITED STATES AS WELL.

24 SO THE TOTAL OFFENSE LEVEL OF 43 AND THE CRIMINAL
25 HISTORY CATEGORY OF VI, WITH THE GUIDELINE RANGE OF LIFE IN

1 CUSTODY AT THAT POINT, MUST ONCE AGAIN GIVE WAY TO THE MAXIMUM
2 STATUTORY PENALTIES THAT APPLY FOR THESE OFFENSES OF
3 CONVICTION UNDER 5G1.1, 5G1.2 AND GIVEN THE DEFINITION OF THE
4 STATUTORY MAXIMUMS, MULTIPLE PUNISHMENT. AND I WILL NOT
5 REPEAT WHAT I SAID EARLIER WITH RESPECT TO THOSE PARTICULAR
6 REFERENCES OR PHRASES.

7 THE 65-YEAR TOTAL HERE, REALIZING THAT IS NOT WHAT
8 IS RECOMMENDED CERTAINLY BY PROBATION, BUT THE REFERENCES TO
9 65 YEARS EITHER AS THE ADVISORY GUIDELINE RANGE OR AS A FIGURE
10 OF TOTAL PUNISHMENT IS ONCE AGAIN A MECHANICAL ADDING UP ALL
11 OF THE STATUTORY MAXIMUMS FOR THESE FOUR COUNTS OF CONVICTION
12 WITHOUT DETERMINING THE ADJUSTED OFFENSE LEVEL THAT I FIND IT
13 TO BE NECESSARY TO ENTERTAIN AS THE ADJUSTED COMBINED OFFENSE
14 LEVEL ANALYSIS IN THIS CASE.

15 SO BEFORE ADDRESSING ANY PARTICULAR DEPARTURE
16 REQUEST, WHETHER EXPRESS OR IMPLIED, THE STATUTORY MAXIMUMS,
17 THE ADVISORY GUIDELINE RANGE FOR EACH OF THE COUNTS OF
18 CONVICTION WOULD BE, FOR COUNTS 1, 2 AND 5, 15 YEARS, AND FOR
19 COUNT 3 IT WOULD BE 20 YEARS.

20 I BELIEVE THERE HAS BEEN AN IMPLICIT REQUEST FOR A
21 COMBINATION OF CIRCUMSTANCES DEPARTURE, ONCE AGAIN WITH THE
22 FALSE PREMISE THAT THE COMBINED ADJUSTED GUIDELINE RANGE IS 65
23 YEARS.

24 AM I CORRECT IN THAT REGARD?

25 **MS. MORENO:** YES, YOUR HONOR.

1 **THE COURT:** I WOULD NOT FIND THAT TO BE THE ADJUSTED
2 GUIDELINE RANGE, THAT BEING 65 YEARS.

3 I THINK AT PAGES 2 AND 3 OF MR. MOHAMUD'S SENTENCING
4 MEMORANDUM THAT IMPLIED OR IMPLICIT REQUEST IS MADE FOR A
5 COMBINATION OF CIRCUMSTANCES DEPARTURE. AND THE REASONS THAT
6 ARE SPECIFIED ARE ESSENTIALLY THE HISTORICAL BACKDROP OF
7 SOMALIA, THE NEED TO AVOID UNWARRANTED SENTENCING DISPARITY
8 AND THE COLLATERAL CONSEQUENCES FOR MR. MOHAMUD. AND
9 ALTERNATIVELY THE ARGUMENT IS FOR A SENTENCE OUTSIDE THE
10 ADVISORY GUIDELINE RANGE. AND UNDER A 3553(A) ANALYSIS ONCE
11 AGAIN I THINK BOTH SIDES ARE GENERALLY IN AGREEMENT THAT THE
12 PRIMARY CONTEXT WITHIN WHICH THIS SENTENCING IS TO TAKE PLACE
13 SHOULD BE UNDER THE 3553(A) ANALYSIS.

14 AND I DO QUESTION THE RELEVANCE OF THE ADVISORY
15 GUIDELINES AND THE ADVISORY GUIDELINE ANALYSIS IN THIS
16 PARTICULAR CASE.

17 SO ARE YOU STILL -- LET ME JUST ASK YOU FOR
18 CLARIFICATION, MS. MORENO. ARE YOU STILL PURSUING EXPRESS
19 DEPARTURES UNDER THE GUIDELINE ANALYSIS HERE OR --

20 **MS. MORENO:** UNDER YOUR HONOR'S GUIDELINE ANALYSIS
21 OR UNDER THE --

22 **THE COURT:** WELL, I THINK FROM HOW I READ YOUR
23 SENTENCING MEMORANDUM YOUR REQUEST FOR MITIGATION IN THE FORM
24 OF DEPARTURES IN A GUIDELINE ANALYSIS IS CONVERTED TO A
25 3553(A) --

1 **MS. MORENO:** THAT'S CORRECT.

2 **THE COURT:** -- REQUEST FOR LENIENCY OR MITIGATION IN
3 LIGHT OF THE EQUITABLE CONSIDERATIONS FOR YOUR CLIENT.

4 **MS. MORENO:** THAT IS CORRECT.

5 **THE COURT:** IS THAT CORRECT?

6 **MS. MORENO:** THAT IS CORRECT, YOUR HONOR.

7 **THE COURT:** ALL RIGHT. WELL, ULTIMATELY, AS WAS THE
8 CASE WITH MR. MOALIN, I THINK THE MOST IMPORTANT SENTENCING
9 DECISION I MUST MAKE HERE IS WHETHER THE CUSTODIAL SENTENCES
10 FOR THE VARIOUS COUNTS OF CONVICTION WILL BE IMPOSED
11 CONCURRENTLY, CONSECUTIVELY OR A COMBINATION OF CONCURRENT AND
12 CONSECUTIVE SENTENCES.

13 BEFORE I GET TO THAT, CONCLUDING WITH THE ADVISORY
14 GUIDELINE ANALYSIS, I WOULD FIND THAT THE ADVISORY GUIDELINE
15 RANGE WOULD BE AS FOLLOWS: FOR EACH OF THE COUNTS OF
16 CONVICTION 15 YEARS CUSTODY FOR COUNTS 1, 2 AND 5, AND THEN 20
17 YEARS OF CUSTODY FOR COUNT 3.

18 WITH RESPECT TO THE 3553(A) ANALYSIS. THE NATURE
19 AND CIRCUMSTANCES OF THE OFFENSE OR OFFENSES NEED TO BE
20 ADDRESSED, OBVIOUSLY. AS I SAID BEFORE, THESE OFFENSES WERE
21 VERY SERIOUS, AS THEY PROVIDED SUPPORT FOR AN ORGANIZATION AND
22 BUTTRESSED A CAMPAIGN OF TERROR BY AL-SHABAAB. EVERYONE
23 AGREES THIS WAS A BRUTAL AND PRETTY HORRIFIC ORGANIZATION IN
24 TERMS OF THE THINGS THAT WERE DONE; TARGETED BOMBINGS,
25 ASSASSINATIONS, AS I SAID EARLIER, MURDER, MAYHEM, INCLUDING

1 ATTACKS ON THE PRESIDENTIAL PALACE AND ULTIMATELY WITH THE
2 PURPOSE TO DEFEAT THE TRANSITIONAL FEDERAL GOVERNMENTAL FORCES
3 THAT WERE ATTEMPTING, AT THAT POINT, TO BRING ORDER TO THE
4 COUNTRY.

5 THE ACTIONS OF MR. MOHAMUD WERE SOMEWHAT AGGRAVATED
6 BECAUSE OF HIS STANDING IN THE COMMUNITY. I DON'T THINK THAT
7 THIS IS SOMETHING THAT CAN BE IGNORED, AND I THINK ULTIMATELY
8 IT CUTS BOTH WAYS.

9 THIS WAS AN IMAM OF A LARGE MOSQUE HERE IN THE SAN
10 DIEGO AREA, AND ABLE TO SECURE -- WELL, TO APPROACH MEMBERS,
11 CERTAIN NUMBERS OF MEMBERS, AND PROCURE SUPPORT FROM THEM.

12 I THINK IT CAN BE FAIRLY SAID THAT HIS STANDING IN
13 THAT REGARD LENT LEGITIMACY TO HIS REQUEST. ALSO, ARGUABLY,
14 TO THE EFFORT OF SUPPORTING THIS TERRORIST ORGANIZATION WHICH,
15 IN TURN -- I UNDERSTAND THE ARGUMENT OF THE GOVERNMENT HERE,
16 IN TURN SOWS THE SEEDS OF THE NOTION THAT TERRORISM IN SUPPORT
17 OF A WORTHY CAUSE AND DEFENSE OF A WORTHY CAUSE IS ACCEPTABLE
18 GIVEN THE RELATIVE WORTHINESS OF THE CAUSE.

19 OBVIOUSLY, WE KNOW THIS NOT TO BE TRUE, AND I ACCEPT
20 WHAT MR. MOHAMUD HAS SAID HERE TODAY. AND IT HAS BEEN A
21 STATEMENT OF SINCERITY AND CONTRITION, TO THE EXTENT HE CAN
22 AFFORD TO BE CONTRITE AT THIS PARTICULAR POINT WITHOUT
23 ACCEPTING RESPONSIBILITY FOR WHAT TOOK PLACE. I UNDERSTAND
24 THAT.

25 I KNOW THERE WAS A REFERENCE --

1 AND THIS WAS SOMETHING WHAT WAS OBJECTED TO BY YOU,
2 MS. MORENO.

3 A REFERENCE IN THE P.S.R. -- I BELIEVE IT WAS THE
4 P.S.R. -- THAT MR. MOHAMUD WAS THE MOST DANGEROUS INDIVIDUAL
5 OF ALL OF THESE DEFENDANTS. AND I WOULD NOT AGREE WITH THAT
6 CHARACTERIZATION. AND, FRANKLY, I THINK, LOOKING AT THE
7 COMPARABLE PARTICIPATORY ROLES OF MR. MOALIN -- AND I SAY THIS
8 WITH RESPECT TO MR. MOALIN, WHO IS STILL HERE TODAY -- AND
9 THAT OF MR. MOHAMUD, I DON'T THINK THERE IS TOO MUCH OF A
10 COMPARISON THERE.

11 MR. MOHAMUD DID NOT HAVE NEARLY THE SAME ROLE,
12 FUNCTIONING, FUNCTIONING ON MULTIPLE LEVELS AS DID MR. MOALIN,
13 AND I THINK THAT IS SOMETHING THAT NEEDS TO BE TAKEN INTO
14 ACCOUNT. ALTHOUGH, AS I SAY, THERE IS AN AGGRAVATING
15 COMPONENT HERE WITH MR. MOHAMUD'S ELEVATED STATUS IN THIS
16 COMMUNITY.

17 IT IS IN THE AREA OF HISTORY AND CHARACTERISTICS OF
18 MR. MOHAMUD WHERE HIS SUBSTANTIAL EQUITIES DO EXIST.
19 MR. MOHAMUD IS A 41-YEAR-OLD SELF-MADE MAN. I WAS QUITE
20 IMPRESSED WITH HIS BACKGROUND. AN IMAM OF SAN DIEGO. HE IS
21 HIGHLY EDUCATED IN SEVERAL AREAS, I NOTED THAT AS WELL, WITH
22 ADVANCED DEGREES IN DIFFERENT AREAS.

23 HE SURVIVED THE RAVAGES OF WAR IN SOMALIA AND
24 DISPLACEMENT TO KENYA, PAKISTAN, AND THEN ULTIMATELY HERE TO
25 THE UNITED STATES WITH REFUGEE STATUS.

1 HE HAS ENORMOUS SUPPORT AND RESPECT FROM HIS MOSQUE,
2 FROM THE COMMUNITY, FROM HIS FAMILY. HE HAS 11 CHILDREN, I
3 UNDERSTAND ALL OF THAT. A VERY LARGE FAMILY. ONE OF HIS
4 CHILDREN, OBVIOUSLY, AFFLICTED WITH AUTISM. AUTISM IS A
5 CONTINUUM, AS WE ALL KNOW, IT IS A SCALE. I DON'T KNOW
6 EXACTLY HOW AGGRAVATED THE CIRCUMSTANCES ARE, BUT IT IS --
7 AUTISM IS A VERY, VERY SERIOUS AND POTENTIALLY DISABLING
8 CONDITION FOR MANY WHO HAVE IT.

9 I AM NOT UNMINDFUL OF THE -- LET ME WRAP UP
10 EQUITABLE CONSIDERATIONS AS THEY RELATE TO MR. MOHAMUD'S
11 BACKGROUND.

12 I AM AWARE THAT EVEN AT THE TIME OF HIS ARREST HERE
13 IN THIS CASE HE WAS CONTINUING ON WITH EDUCATION, SEEKING A
14 DEGREE IN YET ANOTHER AREA, SEPARATE AND APART FROM THEOLOGY.

15 COLLATERAL CONSEQUENCES. I AM NOT UNMINDFUL OF THE
16 COLLATERAL CONSEQUENCES IN THIS CASE IN PARTICULAR THAT MAY
17 NOT BE VISITED UPON SOME OF MR. MOHAMUD'S CO-DEFENDANTS, AND
18 THIS IS PARTICULARLY TOUGH.

19 MS. HAN, AS YOU POINTED OUT, THE COURT OFTEN SEES
20 THIS IN THIS PARTICULAR DISTRICT WITHIN THE CONTEXT OF OTHER
21 OFFENSES. I DARE SAY, THOUGH, I CAN'T -- I CAN RECALL A
22 COUPLE OF CASES WHERE DEPORTATION OF A NON-U.S. CITIZEN WORKED
23 UNBELIEVABLE HARDSHIP, THAT BEING -- I AM THINKING OF ONE CASE
24 IN PARTICULAR WHERE A CANADIAN CITIZEN WHO WAS HEAD OF THE
25 DEPARTMENT OF PEDIATRIC NEPHROLOGY AT UCSD, GIVEN THE

1 CONVICTION HE SUSTAINED, LOST HIS RIGHT TO BE HERE. HE WAS A
2 LEGAL PERMANENT RESIDENT. LOST HIS JOB AS HEAD OF AN
3 IMPORTANT DEPARTMENT OF MEDICINE AT THE UNIVERSITY OF
4 CALIFORNIA AT SAN DIEGO. LOST HIS HOME, HIS PROFESSION, HIS
5 LIVELIHOOD AND WAS REMOVED TO CANADA.

6 THERE ARE A FEW CASES WHERE COLLATERAL CONSEQUENCES
7 ARE VERY, VERY DIFFICULT, AND I THINK THIS IS ONE OF THE CASES
8 THAT FALL INTO THE DIFFICULT CATEGORY OF CASES WHERE THERE ARE
9 COLLATERAL CONSEQUENCES; AS MR. MOHAMUD IS FACING A
10 DEPORTATION, THE LOSS OF HIS HOME HERE, THE LOSS OF HIS
11 COMMUNITY, AND OBVIOUSLY SOME VERY, VERY GRAVE DIFFICULTIES
12 FOR HIS FAMILY.

13 I AM AWARE OF THE EQUITABLE AND GOOD WORKS
14 MR. MOHAMUD HAS DONE, AS WELL AS HIS SPIRITUAL GUIDANCE FOR
15 MANY. ALL OF THOSE HAVE BEEN MENTIONED IN THE P.S.R.

16 MS. MORENO, YOU MADE REFERENCE TO MANY OF THOSE IN
17 YOUR ALLOCUTION, AND I AM NOT UNMINDFUL OF THOSE.

18 AS FAR AS THE HARSHNESS OF THE GUIDELINES AND
19 SPECIFICALLY SECTION 3A1.4, THEY ARE COMPLETELY ELIMINATED, IN
20 MY VIEW, BY THE COURT'S DECISION TO GROUP THESE OFFENSES AND
21 RUN CONCURRENT CUSTODIAL SENTENCES WITH RESPECT TO THESE
22 COUNTS.

23 ULTIMATELY, THE MOST RELEVANT SENTENCING
24 CONSIDERATION HERE WOULD BE, ASIDE FROM NATURE AND
25 CIRCUMSTANCES OF THE OFFENSES AND THE PERSONAL EQUITIES,

1 GENERAL CONSIDERATIONS SUCH AS THE NEED TO PROMOTE RESPECT FOR
2 U.S. LAWS THAT GOVERN TERRORISM, INCLUDING FOREIGN TERRORISM.
3 THE NEED TO DETER, BOTH SPECIFICALLY AND GENERALLY. I HAVE NO
4 THOUGHT THAT MR. MOHAMUD WOULD IN ANY WAY REOFFEND IN THE
5 FUTURE, EVEN IF HE WERE IN A POSITION TO DO SO, BUT THERE IS A
6 GENERAL DETERRENT MESSAGE TO BE VINDICATED HERE IN THIS
7 ANALYSIS. AND PROTECTION OF THE PUBLIC, OBVIOUSLY, FROM THESE
8 THINGS.

9 THERE IS A MESSAGE TO BE SENT THAT THE SEEDS OF THIS
10 KIND OF THINKING CAN'T BE SOWN OR TOLERATED HERE IN THE UNITED
11 STATES, WHETHER THE TARGET IS FOREIGN TERRORISM OR OTHERWISE.

12 SO THE CUSTODIAL SENTENCE NEEDS TO REFLECT THE
13 SERIOUSNESS OF WHAT WAS DONE. IT NEEDS TO AVOID UNWARRANTED
14 SENTENCING DISPARITY, AND I AM VERY MINDFUL OF THAT. AND
15 IMPORTANTLY IT NEEDS TO BE SUFFICIENT BUT NO GREATER THAN
16 NECESSARY TO BUTTRESS ALL OF THESE SENTENCING PURPOSES.

17 OBVIOUSLY, ALTERNATIVES TO CUSTODY WOULD NOT BE
18 APPROPRIATE IN THIS CASE. AND ANY OTHER OPTION AVAILABLE TO
19 THE COURT, AND INTERESTINGLY ENOUGH THERE ARE OTHER OPTIONS
20 THAT ARE LEGALLY AVAILABLE TO THE COURT OTHER THAN CUSTODY,
21 BUT THOSE OPTIONS WOULD NOT BE APPROPRIATE IN THIS PARTICULAR
22 CASE.

23 SO FOR ALL OF THESE REASONS, AND MOST IMPORTANTLY
24 TAKING INTO ACCOUNT THE SERIOUSNESS OF THE OFFENSES AND THE
25 SUBSTANTIAL EQUITIES OF DEFENDANT MOHAMUD, I WOULD FIND THAT A

1 PERIOD OF 13 YEARS CUSTODY FOR COUNTS 1, 2, 3 AND 5, IMPOSED
2 CONCURRENTLY FOR EACH COUNT OF CONVICTION FOR A TOTAL OF 13
3 YEARS IN CUSTODY, WOULD BE FAIR, JUST AND REASONABLE.

4 ULTIMATELY, FOR THESE COUNTS, THEY SHOULD BE IMPOSED
5 CONCURRENTLY AS THEY ALL REPRESENT RELATED OFFENSES WHERE A
6 CONTINUING COURSE OF CRIMINAL CONDUCT AND, AS I SAID EARLIER
7 IN THE CASE OF COUNT 3, THE MEANS BY WHICH THE OTHER COUNTS
8 WERE EXECUTED, THAT IS SECURING THE COMMON GOAL OF FINANCING
9 AL-SHABAAB AND THE TERRORIST ACTIVITY.

10 I WILL SAY THIS. AS I VIEW MR. MOHAMUD HERE, I SEE,
11 ON THE POSITIVE SIDE, TWO THINGS HERE. I SEE HIM AS AN IMAM,
12 A SPIRITUAL LEADER. THIS IS SEPARATE AND APART FROM THE
13 NATURE AND CIRCUMSTANCES OF THE OFFENSES AND SOME OF THE
14 AGGRAVATING FACTORS HERE. I SEE HIM AS AN IMAM.

15 I ALSO SEE HIM AS A MAN WHO DID SUBSTANTIAL WORKS IN
16 TERMS OF CHARITY, EDUCATIONAL SUPPORT, SPIRITUAL GUIDANCE AND
17 OTHER THINGS, THINGS ON THE GROUND THAT COUNTED FOR MANY, MANY
18 PEOPLE. I WOULD SAY THIS, THAT WITHOUT THOSE EQUITIES, WHICH
19 I WEIGHED VERY HEAVILY IN MR. MOHAMUD'S ANALYSIS HERE, AND
20 ULTIMATELY IN THE CUSTODIAL DECISION, MR. MOHAMUD WOULD HAVE
21 BEEN FACING SUBSTANTIALLY MORE TIME.

22 SO I WANT TO EMPHASIZE THAT IT WAS IN THE AREA OF
23 PERSONAL EQUITIES FOR MR. MOHAMUD THAT THIS SENTENCE HAS BEEN
24 ARRIVED AT.

25 ACCORDINGLY, PURSUANT TO THE 1984 SENTENCING REFORM

1 ACT, IT IS THE JUDGMENT AND SENTENCE OF THE COURT THAT AS TO
2 EACH OF THE COUNTS OF CONVICTION, 1, 2, 3 AND 5, MR. MOHAMUD
3 BE, AND HEREBY IS, COMMITTED TO THE CUSTODY OF THE BUREAU OF
4 PRISONS FOR A TERM OF 13 YEARS, WITH EACH OF THOSE COUNTS
5 IMPOSED CONCURRENTLY TO ONE ANOTHER FOR A TOTAL OF 13 YEARS IN
6 CUSTODY.

7 NO FINE IS IMPOSED IN CONNECTION WITH ANY OF THE
8 COUNTS. A \$100 SPECIAL ASSESSMENT IS ASSESSED IN CONNECTION
9 WITH COUNT 1 AND WAIVED FOR THE OTHER COUNTS FOR A TOTAL OF
10 \$100 IN SPECIAL ASSESSMENTS.

11 FOLLOWING COMPLETION OF THE CUSTODIAL SENTENCE IN
12 THIS CASE, MR. MOHAMUD IS TO BE PLACED UPON A THREE-YEAR
13 PERIOD OF SUPERVISED RELEASE, WITH THE STANDARD CONDITIONS
14 APPLYING AS WELL AS THE FOLLOWING SPECIAL CONDITIONS IF HE IS
15 PERMITTED TO RESIDE IN THE UNITED STATES WITH LEGAL STATUS:
16 FIRST, THAT HE SUBMIT TO A SEARCH HIS PERSON, PROPERTY,
17 VEHICLE, ABODE OR RESIDENCE AT A REASONABLE TIME UNDER
18 REASONABLE CIRCUMSTANCES BY A PROBATION OFFICER BASED ON
19 REASONABLE SUSPICION.

20 I WOULD ORDER THAT YOU ADVISE THE OTHER RESIDENTS OF
21 THE PREMISES THAT THE PREMISES ARE SUBJECT TO SEARCH PURSUANT
22 TO THIS CONDITION, SIR.

23 SECOND, THAT YOU REPORT ALL VEHICLES OWNED OR
24 OPERATED OR IN WHICH YOU HAVE AN INTEREST TO PROBATION; AND
25 THIRD, THAT YOU NOT KNOWINGLY ASSOCIATE WITH KNOWN TERRORISTS

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1 OR TERRORIST ORGANIZATIONS. AND WITH RESPECT TO THE
2 RECOMMENDATION THAT YOU NOT HAVE ANY TIES TO FOREIGN COUNTRIES
3 INVOLVED IN TERRORISM ACTIVITIES, I THINK THAT IS TOO BROAD.
4 SO I AM LIMITING THAT TO KNOWN ASSOCIATION WITH ANY
5 INDIVIDUALS WHO ARE INVOLVED WITH TERRORIST ACTIVITY OR WITH
6 TERRORIST ORGANIZATIONS.

7 IF YOU ARE DEPORTED AND/OR REMOVED FROM THE UNITED
8 STATES, DEPORTED, EXCLUDED OR REMOVED OR ALLOWED TO
9 VOLUNTARILY RETURN TO SOME OTHER COUNTRY, THEN YOU ARE TO
10 NEITHER ATTEMPT UNLAWFUL ENTRY INTO THE UNITED STATES NOR
11 ENTER THE UNITED STATES UNLAWFULLY. AND YOU ARE TO REPORT TO
12 PROBATION WITHIN 24 HOURS OF ANY LAWFUL ENTRY INTO THE UNITED
13 STATES DURING THAT THREE-YEAR PERIOD OF TIME.

14 SUPERVISION WOULD BE WAIVED UPON DEPORTATION,
15 EXCLUSION, REMOVAL OR VOLUNTARY DEPARTURE.

16 MR. MOHAMUD, YOU HAVE AN ABSOLUTE RIGHT TO APPEAL
17 FROM THE CONVICTIONS ON THESE COUNTS OF CONVICTION, AS WELL AS
18 FROM THE SENTENCE IMPOSED TODAY. IF YOU DO WISH TO APPEAL YOU
19 MUST FILE A WRITTEN NOTICE OF APPEAL WITHIN 14 DAYS OF TODAY
20 WITH THE CLERK OF THIS COURT. YOU MUST SPECIFY WHAT IT IS YOU
21 ARE APPEALING FROM. YOU SHOULD KEEP THE APPELLATE AUTHORITIES
22 ADVISED OF YOUR WHEREABOUTS AT ALL TIMES WHILE YOUR CASE IS ON
23 APPEAL SO THAT IF THEY NEED TO NOTIFY YOU, THEY BE ABLE TO DO
24 SO.

25 IF YOU CANNOT AFFORD THE SERVICES OF LEGAL

1 REPRESENTATION WHILE YOUR CASE IS ON APPEAL, THOSE SERVICES
2 WILL BE PROVIDED TO YOU AT NO COST TO YOU.

3 SIR, DO YOU UNDERSTAND WHAT I HAVE EXPLAINED TO YOU
4 WITH RESPECT TO YOUR APPELLATE RIGHTS?

5 **DEFENDANT MOHAMUD:** YES, YOUR HONOR.

6 **THE COURT:** DO YOU UNDERSTAND WHAT I EXPLAINED TO
7 YOU WITH RESPECT TO THE CONDITIONS OF SUPERVISED RELEASE,
8 WHETHER YOU ARE PERMITTED TO REMAIN IN THE UNITED STATES OR
9 NOT?

10 **DEFENDANT MOHAMUD:** YES, YOUR HONOR.

11 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT ANY OF
12 THOSE MATTERS?

13 **DEFENDANT MOHAMUD:** YES, YOUR HONOR.

14 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT ANY OF
15 THOSE THINGS?

16 **DEFENDANT MOHAMUD:** NO. NO, YOUR HONOR.

17 **THE COURT:** MS. MORENO, IF YOU WOULD COME FORWARD WE
18 WILL HAVE YOU PROVIDED WITH A COPY OF THE TERMS AND CONDITIONS
19 OF SUPERVISED RELEASE. IF YOU WOULD KINDLY PROVIDE THOSE TO
20 YOUR CLIENT IT WOULD BE APPRECIATED.

21 I WILL RECOMMEND THE WESTERN REGION FOR PLACEMENT OF
22 MR. MOHAMUD.

23 DID YOU HAVE ANOTHER REQUEST, MS. MORENO?

24 **MS. MORENO:** YES. I ALSO, FOR THE RECORD, OBJECT TO
25 THE SENTENCE. THIS WOULD BE A SUBSTANTIVE OBJECTION, FOR THE

1 RECORD, ON BEHALF OF MR. MOHAMUD.

2 **THE COURT:** A SUBSTANTIVE OBJECTION TO THE SENTENCE,
3 TO THE GUIDELINE ANALYSIS.

4 **MS. MORENO:** RIGHT.

5 AND I WAS TOLD THAT CERTAIN DEFENDANTS CAN BE
6 DESIGNATED TO THE M.C.C. IF THAT'S POSSIBLE, I WOULD REQUEST
7 THAT, MERELY GIVEN HIS FAMILY'S DIRE CIRCUMSTANCES.

8 **THE COURT:** THAT'S NOT TYPICALLY DONE, I WAS
9 INFORMED. I DON'T KNOW WHAT YOUR SOURCE OF INFORMATION IS, I
10 WILL NOT EVEN SEEK TO DETERMINE THAT. BUT, NO, I THINK THAT
11 MAY BE SOME HIGHLY QUESTIONABLE INTEL THAT YOU HAVE RECEIVED
12 ON THIS CASE.

13 **MS. MORENO:** CERTAINLY TO THE WESTERN REGION, YOUR
14 HONOR.

15 **THE COURT:** AS TO THE WESTERN REGION. THANK YOU.

16 **MS. MORENO:** THANK YOU.

17 **THE COURT:** MR. COLE -- I AM SORRY. MS. HAN, ANY
18 QUESTIONS OR ADDITIONS, CORRECTIONS, CONCERNS OR OTHERWISE?

19 **MS. HAN:** NO, YOUR HONOR.

20 **THE COURT:** IF YOU WOULD COME FORWARD WE WILL HAVE
21 YOU PROVIDED WITH THE TERMS AND CONDITIONS. THANK YOU. IF
22 YOU COULD PROVIDE THOSE TO MR. MOHAMUD.

23 I THINK WE NEED TO BREAK AT THIS TIME FOR LUNCH.
24 AND SO WE WILL PROCEED WITH MR. DOREH'S SENTENCING AFTER
25 LUNCH, LET US SAY 2:00 P.M., IF THAT IS ACCEPTABLE TO

1 EVERYONE.

2 **MS. MORENO:** YES. I HAVE A REQUEST THAT MY CLIENT
3 NOT BE BROUGHT BACK TO THE M.C.C., IF HE IS ALLOWED TO ALSO
4 COME BACK AS WELL, IT WOULD ALSO GIVE ME AN OPPORTUNITY TO
5 SPEAK WITH HIM FURTHER.

6 **THE COURT:** THAT IS NOT UP TO ME, THAT IS WITHIN THE
7 PURVIEW OF THE MARSHALS. THESE GENTLEMEN NEED TO HAVE LUNCH.
8 AND SO I THINK ANY PARTICULAR REQUEST YOU HAVE YOU MIGHT WANT
9 TO REGISTER THAT WITH THE MARSHALS. MAYBE THEY WILL BE ABLE
10 TO PROVIDE SOME ASSISTANCE FOR YOU IN THAT REGARD.

11 WE ARE IN RECESS, THEN, UNTIL 2:00 P.M.

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1 SAN DIEGO, CALIFORNIA - MONDAY, NOVEMBER 18, 2013 - 2:20 P.M.

2 * * *

3 **THE CLERK:** RE-CALLING MATTER 1 ON THE CALENDAR,
4 10CR4246.

5 **THE COURT:** ALL RIGHT. ALL COUNSEL ARE PRESENT, AS
6 WELL AS ALL DEFENDANTS SET FOR TODAY.

7 WE HAVE MR. DOREH NEXT.

8 MR. GHAPPOUR, ARE YOU READY TO PROCEED WITH
9 SENTENCING THIS AFTERNOON?

10 **MR. GHAPPOUR:** YES, YOUR HONOR.

11 **THE COURT:** MR. DOREH, ARE YOU READY TO PROCEED WITH
12 SENTENCING THIS AFTERNOON?

13 **DEFENDANT DOREH:** YES, YOUR HONOR.

14 **THE COURT:** MR. DOREH, HAVE YOU READ THE PROBATION
15 REPORT AND THE ADDENDUM TO THE PROBATION REPORT?

16 **DEFENDANT DOREH:** YES, SIR.

17 **THE COURT:** IN ENGLISH, OBVIOUSLY.

18 **DEFENDANT DOREH:** YES, SIR.

19 **THE COURT:** THANK YOU, SIR.

20 I HAVE PREVIOUSLY READ AND CONSIDERED THE PROBATION
21 REPORT, THE OBJECTIONS TO THE PROBATION REPORT FILED BY BOTH
22 SIDES, THE ADDENDUM TO THE P.S.R., ALL OF THE SENTENCING
23 MATERIALS. THE SENTENCING MEMORANDUM SUBMITTED BY YOU,
24 MR. GHAPPOUR, TOGETHER WITH EXHIBITS, LETTERS. THE
25 GOVERNMENT'S SENTENCING MEMORANDUM, THE SENTENCING SUMMARY

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1 CHARTS. I CONSIDERED THE NATURE AND CIRCUMSTANCES OF THE
2 OFFENSES AND HISTORY AND CHARACTERISTICS OF MR. DOREH, AS WELL
3 AS THE ADVISORY GUIDELINES AND THE STATUTORY PURPOSES OF
4 SENTENCING.

5 MR. GHAPPOUR, PLEASE.

6 **MR. GHAPPOUR:** THANK YOU, YOUR HONOR.

7 IT IS CLEAR THAT THE COURT HAS GIVEN THE FACTORS A
8 GREAT DEAL OF CONSIDERATION, AND THAT YOUR HONOR HAS
9 THOROUGHLY GONE THROUGH THE MATERIALS. I JUST WANT TO POINT
10 OUT A COUPLE OF QUICK POINTS, AND CONCLUDE WITH THE
11 RECOMMENDATION THAT I MADE, WHICH WAS FOR EIGHT YEARS.

12 I BELIEVE THAT THIS RECOMMENDATION CONFORMS WITH THE
13 STRUCTURE THAT YOU HAVE APPLIED TODAY, PARTICULARLY WITH
14 RESPECT TO THE 3553(A) FACTORS. AND ON THAT, SPECIFICALLY,
15 BASED -- OR DUE TO HIS RELATIVE ROLE IN THE OFFENSE AND THE
16 HISTORY AND CHARACTERISTICS OF MY CLIENT, MR. DOREH.

17 MR. DOREH'S RELATIVE ROLE IS SIGNIFICANTLY REDUCED
18 IN TERMS OF HIS CULPABILITY AND PARTICIPATION, AT LEAST AS
19 COMPARED TO THE OTHER DEFENDANTS THAT WERE SENTENCED TODAY. I
20 THINK I WOULD ONLY ADD THAT IN MAKING YOUR DETERMINATION THAT
21 YOU -- THAT I DRAW YOUR ATTENTION TO THE INDICTMENT OF
22 ABDIAZIZ HUSSEIN, AND THAT IS CASE NO. 13CR1514. I BELIEVE
23 THAT CASE IS BEFORE YOUR HONOR.

24 AND THAT INDICTMENT ACTUALLY ALLEGES THAT MR.
25 ABDIAZIZ HUSSEIN STRUCTURED AND CONDUCTED MR. MOALIN'S

1 TRANSACTIONS, AND SPECIFICALLY THOSE THAT OCCURRED AFTER THE
2 DESIGNATION OF AL-SHABAAB AS A FOREIGN TERRORIST ORGANIZATION.

3 AS FOR THE EQUITABLE FACTORS, I WON'T BELABOR MR.
4 DOREH'S GOOD WORKS, THE LOVE THAT HE HAS FOR HIS FAMILY OR
5 VICE VERSA. I BELIEVE THAT THE PAPERS, AND SPECIFICALLY THE
6 EXHIBITS, SPEAK TO THE FACTORS TO A GREAT EXTENT. BUT I WOULD
7 LIKE TO EMPHASIZE A COUPLE OF POINTS.

8 MR. DOREH IS 56 YEARS OLD. HE SPENT NEARLY THE PAST
9 30 YEARS IN THE UNITED STATES. HE IS A CITIZEN WHO HAS PAID
10 TAXES AND IS LAW ABIDING, AND HAS BEEN LAW ABIDING THE WHOLE
11 TIME WITH THE EXCEPTION OF THE COURSE OF CONDUCT HERE.

12 HIS VOLUNTEER RECORD REFLECTS A RESPECT FOR LAW
13 ENFORCEMENT, INCLUDING HIS WORK WITH PRISONERS AT THE M.C.C.
14 RIGHT HERE IN SAN DIEGO AND OTHER LOCAL STATE AND CITY
15 PRISONS, INCLUDING HIS WORK WITH NEW REFUGEES IN THE
16 COMMUNITY. I THINK IT IS SAFE TO SAY THAT HE IS INSTRUMENTAL
17 TO THE ASSIMILATION AND INTEGRATION OF THE SOMALI REFUGEE
18 COMMUNITY INTO THE MAIN STREAM IN SAN DIEGO. AND IN FACT MANY
19 OF THE LETTERS THAT WERE SUBMITTED TO YOUR HONOR ATTEST TO
20 THAT.

21 HE HAS ALSO DONE A GREAT DEAL OF WORK WITH THE YOUTH
22 COMMUNITY HERE IN SAN DIEGO, AND HAS CHANGED MANY LIVES
23 OUTSIDE OF THOSE AND HIS FAMILY.

24 I WOULD DRAW YOUR ATTENTION TO THE EXAMPLE OF
25 MR. ABDULMALIK BUUL WHO WRITES THAT HE WAS HEADED FOR A LIFE

1 OF CRIME AND WAS INCREDIBLY DISILLUSIONED, AND THAT IT WAS MR.
2 DOREH THAT CHANGED HIS LIFE. IT WAS MR. DOREH THAT TOLD HIM
3 THAT HE SHOULD EMBRACE WESTERN VALUES, AND THAT THERE WAS NO
4 CONTRADICTION WITH BEING A SOMALI AND BEING AN AMERICAN.

5 AND IT WAS THAT MENTORSHIP AND CONTINUED MENTORSHIP
6 THAT CHANGED MR. BUUL'S LIFE. HE IS NOW A PROFESSOR AT MESA
7 COLLEGE, AND HE IS FEATURED ON THE COVER OF THE LOCAL SAN
8 DIEGO UNION TRIBUNE, SUBMITTED TO YOUR HONOR AS AN EXHIBIT.

9 MR. DOREH'S RESPECT FOR THE CRIMINAL JUSTICE SYSTEM
10 IS ALSO REFLECTED IN OTHER COMMUNITY WORK THAT I WON'T GET
11 INTO. BUT I SAY THIS TO EMPHASIZE THAT THE OFFENSE CONDUCT
12 HERE IS NOT TYPICAL OF HIS CHARACTER, AND THAT I WOULD URGE
13 YOUR HONOR TO TAKE HIS CHILDREN AND THEIR ACCOMPLISHMENTS AS
14 MORE REFLECTIVE OF HIS CHARACTER ON A DAY-TO-DAY.

15 MR. DOREH HAS EIGHT CHILDREN AND A WIFE THAT HE
16 DEARLY LOVES. HE HAS RAISED EDUCATED AND PROGRESSIVE YOUNG
17 MEN AND WOMEN.

18 HIS ELDEST CHILD, FOR INSTANCE, HAFSA, HOLDS A
19 MASTER'S DEGREE AND IS CURRENTLY PURSUING OR APPLYING FOR A
20 PH.D. PROGRAM. SHE SAYS THAT HER FATHER WAS INSTRUMENTAL TO
21 HER SUCCESS. AND THAT HE WAS THE ONE THAT ENCOURAGED HER,
22 EVEN WHEN IT MEANT DEFYING COMMUNITY NORMS SUCH AS TRAVEL
23 WITHOUT CHAPERONE. HE NEVER ONCE TOLD HER -- HE NEVER ONCE
24 STOOD IN HER WAY BASED ON ANY COMMUNITY OR RELIGIOUS STANDARDS
25 THAT MIGHT BE THOUGHT AS NOT TYPICAL IN THE UNITED STATES.

1 AND DESPITE THE STIGMA THAT THIS MIGHT HAVE CAUSED FOR BOTH
2 HIS DAUGHTER AND HIMSELF AND HIS FAMILY, HE DEFENDED HER AND
3 WAS 100 PERCENT SUPPORTIVE.

4 MR. DOREH'S SON, HIS ELDEST, IS AN ASPIRING
5 BIOMEDICAL ENGINEER AT MESA COLLEGE. HE PLAYS ON THE
6 BASKETBALL TEAM FOR MESA AND TRAVELS ALL OVER THE COUNTRY. HE
7 HOPES TO ONE DAY BE ABLE TO DEVELOP TECHNOLOGIES THAT
8 HELPED -- SORT OF LIKE THE TECHNOLOGIES THAT HELPED HIS LITTLE
9 BROTHER WHO HAS A MOTOR DISABILITY, BECAUSE MR. DOREH'S -- ONE
10 OF HIS YOUNGER SONS WAS BORN -- SORRY -- SUFFERED A STROKE AT
11 THREE YEARS OLD AND WAS -- HAD THE RIGHT SIDE OF HIS BODY
12 COMPLETELY PARALYZED. AND THROUGH THE TECHNOLOGIES IN THE
13 UNITED STATES THEY WERE ABLE TO PERFORM A NUMBER OF SURGERIES
14 AND BEGIN A PROCESS, A SLOW PROCESS OF RECOVERY THAT HAS HIM
15 WITH LIMITED MOBILITY BUT CERTAINLY MUCH BETTER THAN
16 CIRCUMSTANCES YEARS AGO.

17 MR. DOREH IS THANKFUL FOR THESE AND OTHER PRIVILEGES
18 THAT THE UNITED STATES HAS AFFORDED HIS FAMILY, AS A REFUGEE
19 WHO FLED THE VIOLENCE AND COMMUNISM THAT PLAGUED SOMALIA
20 NEARLY 30 YEARS AGO, AND FOR PROVIDING THE FREEDOMS OF
21 EDUCATION, MULTICULTURALISM AND DIVERSITY THAT HIS FAMILY HAS
22 SO ELOQUENTLY PROSPERED IN.

23 THE MOST IMPORTANT THING TO MR. DOREH IS THAT HIS
24 CHILDREN ARE TAKEN CARE OF. HIS YOUNGEST IS SIX YEARS OLD,
25 AND SHE WAS THREE WHEN HE WAS FIRST INITIALLY DETAINED. HE

1 WANTS HER TO END UP LIKE THE ELDEST. HE FEARS THAT WITHOUT
2 HIS PRESENCE HIS WIFE WILL NOT BE ABLE TO HANDLE EIGHT
3 CHILDREN. THE EIGHT CHILDREN GO TO FOUR DIFFERENT SCHOOLS.
4 SHE DOESN'T DRIVE. SHE IS ILL AND DIABETIC.

5 YOUR HONOR, IT IS FOR THESE AND OTHER REASONS WHICH
6 MR. DOREH WOULD LIKE TO EXPLAIN TO YOU HIMSELF THAT I BELIEVE
7 A SENTENCE OF NO MORE THAN EIGHT YEARS IS A JUST SENTENCE THAT
8 PROMOTES THE RESPECT FOR THE RULE OF LAW.

9 THANK YOU.

10 **THE COURT:** THANK YOU, MR. GHAPPOUR.

11 MR. DOREH, YOU DO HAVE AN OPPORTUNITY AT THIS TIME
12 TO MAKE ANY STATEMENT YOU WISH TO MAKE. YOU MAY CERTAINLY
13 REMAIN SEATED. IF YOU WOULD, PLEASE, PULL THAT MICROPHONE
14 OVER TO YOU, PRETTY CLOSE, SO THAT EVERYONE CAN HEAR YOU.
15 THANK YOU.

16 **DEFENDANT DOREH:** THANK YOU, YOUR HONOR.

17 GOOD AFTERNOON, YOUR HONOR, JUDGE MILLER. AND I AM
18 GRATEFUL FOR THE CHANCE TO ADDRESS YOU. I UNDERSTAND AND
19 RESPECT THE JURY'S VERDICT, AND I ALSO RESPECT YOUR HONOR'S
20 PERSPECTIVE, JUDGMENT AND SENSE.

21 YOUR HONOR, I WOULD LIKE TO ADDRESS YOU TO ASK YOU
22 FOR YOUR MERCY AND COMPASSION. YOUR HONOR, I AM FATHER OF
23 EIGHT CHILDREN WHO DESPERATELY NEED MY HELP. THESE CHILDREN
24 GO FOUR DIFFERENT SCHOOLS. MY WIFE DOES NOT DRIVE AT ALL,
25 THAT IS BECAUSE SHE HAS BEEN SICK FOR YEARS NOW. YOUR HONOR,

1 MY CHILDREN NEED ME TO HELP WITH THEIR HOMEWORK, DOCTOR'S
2 APPOINTMENT, TAKING TO SCHOOL AND BRINGING BACK TO HOME. MY
3 SON ABBIRAHMAN IS DISABLED AND NEEDS SPECIAL CARE AND
4 SUPERVISION, YOUR HONOR, INCLUDING HIS APPOINTMENTS, THERAPY,
5 HELPING WITH HIS SCHOOL AND HOMEWORK.

6 YOUR HONOR, I AM SO PROUD OF MY CHILDREN. MY ELDEST
7 DAUGHTER, HAFSA, COMPLETED, AS MY LAWYER JUST BRIEFLY SAID,
8 HER MASTER'S DEGREE AND IS STARTING HER PH.D. DEGREE. ZEINAB,
9 THE SECOND ELDEST DAUGHTER, IS GOING TO BECOME NURSE
10 PRACTITIONER, IN SAN DIEGO CITY COLLEGE. ABDULLAHI, AS YOU
11 ALREADY HEAR, THE THIRD OLDEST BOY, IS A FULL-TIME STUDENT IN
12 MESA COLLEGE, MAJORING BIOMEDICAL ENGINEERING. HE PLAYS ALSO
13 AND A MEMBER OF MESA COLLEGE BASKETBALL TEAM.

14 YOUR HONOR, I WANT THE YOUNG ONES TO HAVE A BRIGHT
15 FUTURE AS OLD ONES HAVE.

16 YOUR HONOR, I HAVE ALWAYS THANKFUL FOR THE
17 OPPORTUNITY THE UNITED STATES HAS GIVEN ME, INCLUDING FREEDOM
18 OF THINKING, FREEDOM OF CHOICE TO PURSUE MY EDUCATION. AT
19 THAT POINT, YOUR HONOR, IT WAS MY PARADIGM, YOU KNOW, AND
20 HONOR TO COMPLETE DIFFERENT LEVEL OF EDUCATION IN THE U.S. IT
21 IS MY PLEASURE ALSO TO SEE MY CHILDREN HAVING A GREAT
22 OPPORTUNITY OF LEARNING AND IMAGINING DIFFERENT SUBJECTS.
23 YOUR HONOR, MY WHOLE PURPOSE OF COMING HERE TO THE U.S. WAS TO
24 GET A BETTER LIFE AND A BETTER FUTURE, AND I AM THANKFUL FOR
25 THAT.

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1 YOUR HONOR, I ALSO VALUE THE JUSTICE SYSTEM HERE.
2 YOUR HONOR, I WOULD LIKE TO ASK YOU FOR YOUR MERCY AND YOUR
3 JUDGMENT TO PLACE ME SOMEWHERE NEARBY MY FAMILY BECAUSE OF MY
4 WIFE'S HEALTH. I DON'T WANT MY FAMILY TO SUFFER MORE THAN
5 THEY HAVE TO.

6 FINALLY, YOUR HONOR, WHAT IS MORE IMPORTANT TO ME IS
7 TO ATTENDING MY DAUGHTER'S PH.D. GRADUATION AS A FREE MAN FOR
8 THE YEARS TO COME. THE DAY SHE GETS HER DOCTORATE DEGREE,
9 THAT DAY, YOUR HONOR, WOULD REPRESENT EVERYTHING THAT I WANT
10 TO PASS ON.

11 YOUR HONOR, AS I SAID, IT IS THE TIME WHEN I LEFT MY
12 COUNTRY AND IT WAS COMMUNISM, AND MY LIFE BECAME A RISK. I
13 WAS HIGH SCHOOL TEACHER, AND WHEN THAT KIND OF PROBLEM
14 HAPPENS, YOU KNOW, IT IS POLITICS. AND ALL THE SCHOLARS THEY
15 WERE AGAINST COMMUNISTS AND I JUST FLED NEXT COUNTRY IN KENYA
16 WHERE I WAS ACCEPTED THREE DIFFERENT COUNTRY: AUSTRALIA,
17 CANADA AND UNITED STATES.

18 I HAVE CHOSEN THE UNITED STATES BECAUSE OF MY
19 TEACHERS IN THE MIDDLE SCHOOL AND THE COLLEGE, YOU KNOW. AT
20 THAT POINT, YOUR HONOR, I DON'T BELIEVE MY INTENTION OR THE
21 PURPOSE I CAME UNITED STATES TO MISLEAD ANYBODY ELSE OR TO
22 HARM OR THREAT TO ANYBODY ELSE. I CAME HERE TO CONTINUE MY
23 EDUCATION, WHICH IS THE REFLECTION YOU SEE TODAY. I COMPLETED
24 IN SAN DIEGO STATE COMPUTER SCIENCE, I WENT TO PHOENIX AND I
25 COMPLETED MASTER IN COMPUTER AND TECHNOLOGY. AND I WAS SIX

1 MONTHS AWAY TO GET MY DOCTORAL DEGREE.

2 **THE COURT:** YOU ARE TALKING ABOUT THE UNIVERSITY OF
3 PHOENIX RATHER THAN PHOENIX, ARIZONA. RIGHT?

4 **DEFENDANT DOREH:** YEAH, UNIVERSITY OF PHOENIX. I AM
5 SORRY. THEN I WAS SIX MONTHS AWAY TO GRADUATE, GET MY
6 DOCTORAL DEGREE, SPECIALIZING IN ORGANIZATION OF MANAGEMENT IN
7 THE SAME OF UNIVERSITY, UNIVERSITY OF PHOENIX. THAT, YOUR
8 HONOR, TELLS YOU MY VISION CAME TO THE UNITED STATES.

9 ANOTHER POINT, YOUR HONOR, IN MY CHILDREN I WANT TO
10 BE A ROLE MODEL FOR MY CHILDREN. WHEN THEY COME FROM SCHOOL,
11 I HAVE TO WORK WITH THEM, THEIR HOMEWORK. I HAVE TO TAKE TO
12 LIBRARY, I HAVE TO TAKE EVERYWHERE THEY NEED TO MAKE SURE THEY
13 BENEFIT FROM THIS KIND OF OPPORTUNITY.

14 FINALLY, YOUR HONOR, I LIKE TO ASK YOU TO LOOK MY
15 REFLECTION AS A PERSON, AND VALUE MY EDUCATIONAL BACKGROUND
16 AND THE ACTIVITY THAT I HAVE DONE FOR YEARS IN SOMALI
17 COMMUNITY IN SAN DIEGO. I CREATED THREE DIFFERENT
18 ORGANIZATIONS. AMANA FOUNDATION, IT IS KNOWN IN SOMALI
19 COMMUNITY, IT IS A VALUABLE CHARITABLE ORGANIZATION. I WAS
20 THE FIRST THREE PEOPLE CREATED THAT ORGANIZATION. A NUMBER OF
21 ORGANIZATION, YOUR HONOR. I CREATED SOMALI COMMUNITY, WE WERE
22 SEVEN PEOPLE WHEN WE CAME HERE 1992. YOUR HONOR, ALSO I
23 CREATED RIGHT NOW THE SOMALI BURIAL FUND, BURIAL FUND IS
24 THAT -- THOSE THREE ORGANIZATIONS ARE ACTIVE AND VALUABLE TO
25 THE COMMUNITY. IF YOU ASK ANYONE IN SOMALI COMMUNITY IN SAN

1 DIEGO THEY CAN BE WITNESS FOR THAT.

2 SECOND THING, YOUR HONOR, IN SOMALI COMMUNITY SAN
3 DIEGO I SPENT MY TIME VOLUNTEERING. NOT PAID, NOBODY PAYS ME,
4 YEARS OF VOLUNTARY. TEACHING THEM, YOU KNOW, THE CHILDREN
5 FROM DRUGS AND WRONG WAY TO BRING THEM THEIR FUTURE. AS MY
6 LAWYER TELLS YOU, HE TELLS YOU ONE PERSON, BUT THERE IS SO
7 MANY STUDENTS IN SAN DIEGO NOW HAPPY AND GRATEFULLY IN THE
8 COMMUNITY, THAT I WAS THE REASON FOR THEM TO BECOME AND TAKE
9 CARE OF THEIR LIFE.

10 IN ADDITION, YOUR HONOR, 1996 UNTIL 2000, EVEN
11 THOUGH I HAD THE BACK SURGERY TWO TIMES, I WAS DOING VOLUNTEER
12 WORK IN M.C.C. RIGHT HERE, CITY JAIL AND STATE PRISON IN OTAY.

13 ALL THIS TELLS YOU WHO I AM. I DON'T WANT TO TAKE
14 YOUR TIME, YOUR HONOR. I THINK YOU HAVE ALREADY MY
15 BACKGROUND, MY EDUCATION AND EVERYTHING. I REALLY ASKING YOU
16 AT LEAST TO PLACE ME WHERE MY CHILDREN CAN SEE ME BECAUSE MY
17 WIFE CANNOT DRIVE. AND MY CHILD ABBIRAHMAN, ESPECIALLY, IS
18 DISABLED AND NEED MORE HELP FROM ME.

19 I UNDERSTAND I AM ONE OF THE CO-DEFENDANTS IN HERE,
20 MY INMATES, MY FRIENDS, BUT ALL I AM ASKING YOU, YOU KNOW,
21 YOUR MERCY AND YOUR COMPASSION TO LOOK MY SITUATION. AND I DO
22 APPRECIATE FOR YOU HAVING US FOR TWO YEARS NOW THIS CASE, YOU
23 KNOW, I DO APPRECIATE FOR YOUR JUDGMENT. AND I DO APPRECIATE
24 FOR YOUR DECISIONS.

25 THANK YOU VERY MUCH, YOUR HONOR.

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1 **THE COURT:** THANK YOU, MR. DOREH.

2 MS. HAN.

3 **MS. HAN:** YOUR HONOR, THIS DEFENDANT CONTENDS THAT
4 HE HAS A MITIGATING ROLE. 3B1.2 OF THE GUIDELINES SAYS THAT
5 MITIGATING ROLE IS APPROPRIATE IN CASES WHERE DEFENDANTS ARE
6 SUBSTANTIALLY LESS CULPABLE THAN THE AVERAGE PARTICIPANTS. SO
7 JUST BRIEFLY I JUST WANT TO GO OVER THE HIGHLIGHTS OF WHAT THE
8 EVIDENCE AT TRIAL SHOWED ABOUT WHAT THE DEFENDANT DID.

9 YOUR HONOR, THE EVIDENCE AT TRIAL SHOWED THAT AFTER
10 DEFENDANT BASAALY MOALIN SPOKE WITH ADEN AYROW ABOUT THE NEED
11 TO GET MONEY TO AYROW, AND AYROW URGED HIM, SUGGESTING, EVEN,
12 HE COULD GET A LOAN, IF NECESSARY, TO SEND MONEY; DEFENDANT
13 ISSA DOREH IS THE VERY FIRST PERSON THAT BASAALY CALLED
14 THEREAFTER BECAUSE HE KNEW THAT HE WAS A CONNECTION TO
15 FUNDRAISING HERE IN SAN DIEGO.

16 ADDITIONALLY, DEFENDANT ISSA DOREH WAS EMPLOYED AT
17 THE SHIDAAL EXPRESS, AND THAT IS NOT A MINOR THING. THE
18 SHIDAAL EXPRESS WAS A LICENSED MONEY SERVICE BUSINESS, AND AT
19 THE SHIDAAL EXPRESS -- BECAUSE OF HIS ROLE AT THE SHIDAAL
20 EXPRESS THE DEFENDANT AND HIS CO-DEFENDANTS WERE ABLE TO HAVE
21 THE FEES FOR THE MONEY THAT WAS SENT TO AL-SHABAAB'S WAIVED,
22 WHICH WAS SIGNIFICANT. IT WAS SIGNIFICANT SO MUCH SO THAT HIS
23 CO-DEFENDANT, BASAALY MOALIN, BRAGGED ABOUT IT TO OTHER PEOPLE
24 THAT ESSENTIALLY MR. DOREH WAS HIS IN IN THE SHIDAAL EXPRESS
25 AND THAT WAS THE WAY THAT THEY WERE ABLE TO GET FUNDS TO

1 AL-SHABAAB.

2 ADDITIONALLY, YOUR HONOR, DEFENDANT DOREH COULD BE
3 HEARD ON THE PHONE TALKING TO SHEIKH HASSAN, THE
4 CO-CONSPIRATOR IN MISSOURI, TALKING TO HIM ABOUT HOW TO GET
5 MONEY TO SAN DIEGO AND HOW THEY WERE ULTIMATELY GETTING THAT
6 MONEY TO SOMALIA.

7 AND FINALLY HE COULD ALSO BE HEARD ON THE CALLS WITH
8 BASAALY MOALIN IN JULY OF 2008 CHECKING ON WHETHER OR NOT
9 MONEY HAD ACTUALLY BEEN SENT.

10 SO I DON'T THINK IT IS A MINIMAL ROLE, OR EVEN A
11 MINOR ROLE, AT ALL, THAT HE PLAYED IN THIS CONSPIRACY AND
12 CERTAINLY IN HIS SUBSTANTIVE ACTS.

13 ADDITIONALLY, YOUR HONOR, A GREAT DEAL HAS BEEN SAID
14 ABOUT HIS EDUCATION. OF COURSE, HE HAS TWO BACHELOR'S
15 DEGREES, A MASTER'S DEGREE AND STARTED OUT ON A PH.D. PROGRAM
16 AS WELL. AND THOSE ARE SIGNIFICANT ACCOMPLISHMENTS, FOR SURE.
17 BUT I THINK IT CANNOT BE SAID ENOUGH THAT HE VERY MUCH SAW
18 HIMSELF ALLIED WITH AND BEING THE SAME AS THOSE PEOPLE WHO
19 WERE FIGHTING IN SOMALIA; THOSE PEOPLE BEING AL-SHABAAB.

20 THAT CAN'T BE OVERSAID TO THE EXTENT THAT THERE IS A
21 CALL THAT WE PLAYED AT TRIAL WHERE HIS CO-DEFENDANT,
22 MR. MOALIN, SAID: WE ARE NOT LESS WORTHY THAN THE GUYS
23 FIGHTING.

24 AND THIS DEFENDANT RESPONDED: YES, THAT'S IT. IT
25 IS SAID THAT IT TAKES AN EQUAL EFFORT TO MAKE A KNIFE, WHETHER

1 ONE MAKES THE HANDLE, HAMMERS THE IRON OR BAKES IT IN THE
2 FIRE.

3 I THINK THAT IS SIGNIFICANT BECAUSE ALTHOUGH THE
4 DEFENDANT NOW TRIES TO MINIMIZE HIS ROLE IN COMPARISON TO HIS
5 CO-DEFENDANTS, HE VERY MUCH PLAYED AN INSTRUMENTAL ROLE IN
6 THIS CONSPIRACY, AND WAS VERY PROUD OF THE ROLE THAT HE
7 PLAYED.

8 ADDITIONALLY, YOUR HONOR, I DO THINK IT IS
9 SIGNIFICANT THAT THIS DEFENDANT HAS BEEN A ROLE MODEL IN THIS
10 COMMUNITY. HE HAS BEEN HERE SINCE APPROXIMATELY THE 1980'S,
11 AND SO HE TOO TOOK ON A LEADERSHIP ROLE IN THIS COMMUNITY.
12 AND HIS PARTICIPATION IN THESE CRIMES ALSO GAVE A LEGITIMACY
13 TO WHAT THE DEFENDANTS WERE DOING.

14 WITH THAT WE WOULD SUBMIT ON OUR RECOMMENDATION.
15 THANK YOU, YOUR HONOR.

16 **THE COURT:** MS. HAN, HOW WOULD YOU ANALYZE THE ROLE
17 OF MR. DOREH ON A COMPARATIVE BASIS, LOOKING AT HIS TWO
18 CO-DEFENDANTS TODAY?

19 **MS. HAN:** YOUR HONOR, I GUESS I WOULD SAY WE
20 CONDUCTED THAT ANALYSIS WHEN WE CONDUCTED OUR 3553(A) ANALYSIS
21 AND CAME UP WITH OUR RECOMMENDATIONS, SO WE ARE ON THE RECORD
22 FOR RECOMMENDING, FOR THIS DEFENDANT, 17 YEARS.

23 CERTAINLY WE FIND HIM TO BE -- IN LIGHT OF HIS
24 VARIOUS FACTORS WE FIND HIM TO BE A SLIGHT BIT LESS CULPABLE
25 TO THE EXTENT THAT HE WAS NOT THE RELIGIOUS LEADER FOR THIS

1 SIGNIFICANT COMMUNITY HERE IN SAN DIEGO; HOWEVER, HE IS
2 CERTAINLY NOT SOMEBODY THAT JUST DESERVES ANY MINOR ROLE
3 REDUCTION. HE CERTAINLY IS NOT SOMEBODY THAT IS SUBSTANTIALLY
4 LESS CULPABLE THAN HIS CO-DEFENDANTS, PARTICULARLY BECAUSE
5 OBVIOUSLY MR. MOALIN WAS AN ORGANIZER, A DIRECT CONNECT TO
6 ADEN AYROW; MR. MOHAMUD WAS A RELIGIOUS LEADER WHO HAD THE
7 ABILITY TO GIVE A LEGITIMACY AND TO CALL TO PEOPLE AT THE
8 MOSQUE TO GIVE MONEY. AND MR. DOREH WAS ESSENTIAL. HE WAS AT
9 THE PLACE THAT WAS REMITTING THE MONEY TO AL-SHABAAB, AND
10 BECAUSE OF HIS STATUS THERE HE WAS ALLOWED TO HAVE THE FEES
11 WAIVED SO THAT IT WAS MUCH EASIER TO GET MONEY.

12 **THE COURT:** WHAT WAS THE TOTAL AMOUNT OF FEES
13 WAIVED?

14 **MS. HAN:** THE TOTAL AMOUNT OF FEES WAIVED?

15 **THE COURT:** YES.

16 **MS. HAN:** YOUR HONOR, THAT IS UNCERTAIN BECAUSE, AS
17 IS DISPLAYED IN THE PHONE CALLS, THERE WERE SORT OF VARYING
18 DISCUSSIONS ABOUT WHAT FEES WOULD BE, SO THERE WAS NOT EXACTLY
19 ONE FEE PER TRANSACTION. SO I CAN'T EXACTLY GIVE YOU THAT
20 FIGURE.

21 **THE COURT:** I KNOW YOU SET FORTH IN YOUR SENTENCING
22 MEMORANDUM THAT MR. DOREH'S INVOLVEMENT WAS CONSISTING OF A
23 COUPLE OF PHONE CALLS, THE REFERENCES YOU MADE, AND HIS
24 POSITION AT SHIDAAL EXPRESS WHICH ALLOWED HIM TO HAVE THE
25 FUNDS TRANSMITTED. AND YOU MADE REFERENCE TO A WAIVER OF SOME

1 FEES. AND I DON'T KNOW THAT I EVER HEARD WHAT THAT WAIVER
2 WOULD CONSIST OF, WHETHER IT WAS DE MINIMUS, WHETHER IT WAS
3 SUBSTANTIAL. AND IF YOU DON'T KNOW THAT IS FINE.

4 **MS. HAN:** YOUR HONOR, I GUESS WHAT -- I DIDN'T WANT
5 TO GO ON THE RECORD THAT IT WAS A PARTICULAR PERCENTAGE, BUT
6 GENERALLY SPEAKING IT WAS THOUGHT TO BE 3 PERCENT. CERTAINLY
7 IN THE PHONE CALLS THERE WERE INSTANCES WHERE THERE WERE
8 DISCUSSIONS OF HIGHER NUMBERS OR LOWER NUMBERS SO I DIDN'T --
9 BUT THAT, JUST GENERALLY, WAS 3 PERCENT.

10 ADDITIONALLY, YOUR HONOR, THIS DEFENDANT IS A
11 DEFENDANT THAT BASAALY MOALIN TALKED ABOUT WITH ADEN AYROW BY
12 NAME. HE REFERRED TO HIM AS THE SALEBAN CLERIC THAT THEY HAD
13 SPOKEN TO. SO IN AT LEAST IN TWO PHONE CALLS HE IS REFERRED
14 TO SOMEBODY WHO HAD DIRECT CONTACT WITH ADEN AYROW.

15 MOREOVER, YOUR HONOR, AS IS CLEAR FROM THE PHONE
16 CALLS, HE WAS THE PERSON WHO WAS ABLE TO FACILITATE THE
17 RELATIONSHIP BETWEEN DEFENDANT MOALIN AND DEFENDANT MOHAMUD
18 AND SO THAT IS NOT AN INSIGNIFICANT RELATIONSHIP, BECAUSE
19 CERTAINLY DEFENDANT MOALIN WAS A DIRECT CONNECTION TO SOMALIA
20 AND DEFENDANT MOHAMUD WAS THE CONNECTION TO THE REST OF THE
21 SOMALI COMMUNITY FROM WHOM -- FROM WHICH THEY FUNDRAISED.

22 **THE COURT:** THANK YOU, MS. HAN. I APPRECIATE YOUR
23 REMARKS.

24 MR. GHAPPOUR, DID YOU WANT TO BE HEARD FURTHER?

25 **MR. GHAPPOUR:** YES, YOUR HONOR, REALLY QUICKLY ON A

1 COUPLE OF BRIEF POINTS.

2 I AM JUST GOING TO GO IN SEQUENCE.

3 MS. HAN SAID THAT HIS CULPABILITY IN PART WAS BASED
4 ON THE FACT THAT MR. MOALIN CALLED MR. DOREH; NOT THAT MR.
5 DOREH CALLED MR. MOALIN. I AM CONFUSED ABOUT HOW THAT RELATES
6 TO CULPABILITY.

7 SECONDLY, THE WAIVER OF FEES. TO THE EXTENT THAT HE
8 WAS RESPONSIBLE, HYPOTHETICALLY, FOR THE WAIVER OF FEES, THAT
9 WOULD NOT HAVE BEEN MATERIAL SUPPORT TO A TERRORIST GROUP, IT
10 WOULD HAVE BEEN SUPPORTING A COMMUNITY FOR A NUMBER OF PEOPLE
11 TRYING TO SEND MONEY FOR WHATEVER PURPOSES. THAT IS THE
12 DISTINCTION.

13 THIRD OF ALL, THE 3 PERCENT COMES OUT TO, ON THE
14 CHARGED CONDUCT, \$255, WHICH I WOULD SAY IS DE MINIMUS AND NOT
15 PROHIBITIVE OF SENDING UPWARDS OF 8,000 OR 10,000 OR \$15,000.

16 HIS EMPLOYMENT AT THE SHIDAAL. THERE WAS NO
17 EVIDENCE AT TRIAL THAT HE HAD ANY SORT OF MANAGEMENT ROLE; IN
18 FACT THE EVIDENCE WAS TO THE CONTRARY. THERE WAS NO EVIDENCE
19 THAT HE HAD ANY CONTROL OF THE MANAGER OF THE SHIDAAL THAT
20 ACTUALLY CONDUCTED THE TRANSACTIONS OR THE OWNER OF THE
21 SHIDAAL THAT WAS LATER INDICTED FOR ENGAGING IN A PONZI
22 SCHEME.

23 AS FOR CHECKING ON HOW THE MONEY WAS SENT, THAT IS
24 CORRECT, THAT IS THE ONE THING THAT I SEE THAT CAME OUT OF THE
25 CALLS IS THAT THERE WERE OFTENTIMES CALLS TO MR. DOREH WHO

1 WOULD REPORT ON THE STATUS OF A PARTICULAR TRANSACTION. BUT
2 WHEN THERE WAS A CALL ABOUT MAKING A TRANSACTION IT WAS
3 ACTUALLY MR. ABDI RAZAK OR THE SHIDAAL OWNER THAT MADE THE
4 TRANSACTION.

5 IN TERMS OF SEEING HIMSELF AS ALLIED WITH
6 AL-SHABAAB, I AM NOT CLEAR HOW THE EIGHT CALLS THAT THE
7 GOVERNMENT USED IN THEIR CASE-IN-CHIEF ESTABLISHED THAT;
8 PARTICULARLY BECAUSE AL-SHABAAB WASN'T MENTIONED ON THOSE
9 CALLS. AND IF WE ARE GOING TO INFER THAT ALLIANCE FROM
10 MR. MOALIN'S CALLS WITH OTHERS, THAT WOULD BE A DIFFERENT
11 STORY. BUT I WOULD URGE YOUR HONOR NOT TO DO THAT.

12 AND AS FAR AS THE EQUAL EFFORT TO BAKE A KNIFE, THAT
13 IS A PARABLE, IT IS AN IDIOM, I GUESS. I BELIEVE AN IDIOM IS
14 A PARABLE -- FORGIVE ME. I MYSELF AM FROM AN IMMIGRANT
15 COMMUNITY, SO THAT PARTICULAR PARABLE MEANS IT IS ALL ABOUT
16 TEAMWORK AND IT WOULD DISTINGUISH WHAT HE SEES HIS ROLE AS AND
17 THE ROLE OF THE FIGHTERS -- THE QUOTE, UNQUOTE, FIGHTERS.

18 IN TERMS OF FACILITATING ANY COMMUNICATION BETWEEN
19 MR. MOALIN AND MR. MOHAMUD, THAT IS BASED ON ONE CALL IN
20 DECEMBER, THREE OR FOUR MONTHS BEFORE THE DESIGNATION OF
21 AL-SHABAAB. IN THE CONVERSATION, BASICALLY, MR. MOALIN ASKED
22 MR. DOREH IF ON HIS WAY TO THE MOSQUE THE NEXT DAY -- IT WAS
23 KNOWN THAT MR. DOREH GOES TO THE MOSQUE EVERY MORNING FOR
24 PRAYER AND IT IS KNOWN THAT MR. MOHAMUD IS THE IMAM -- TO
25 BASICALLY TELL HIM THAT BASAALY -- SORRY -- MR. MOALIN WANTED

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1 TO SPEAK TO HIM. THAT IS THE FACILITATION.

2 THANK YOU, YOUR HONOR.

3 **THE COURT:** THANK YOU, MR. GHAPPOUR. ALL RIGHT.

4 I WILL START ON THIS MATTER AS I DID THE OTHER TWO
5 MATTERS EARLIER THIS MORNING. LET ME START WITH THE
6 OBJECTIONS AND TRY TO GET THOSE RESOLVED BECAUSE THEY -- WELL,
7 IT NEEDS TO BE DONE.

8 BOTH SIDES HAVE FILED GUIDELINE OBJECTIONS. THE
9 GUIDELINE OBJECTIONS ARE OF A SIMILAR SORT THAT WERE FILED
10 WITH RESPECT TO DEFENDANTS MOALIN AND MOHAMUD. AND I WILL
11 ADDRESS ALL OF THE GUIDELINE ISSUES IN MY ALLOCUTION.

12 I DO WANT TO ADDRESS THE FACTUAL DISPUTES OR
13 OBJECTIONS FILED ON BEHALF OF MR. DOREH. AND WITH RESPECT TO
14 THE FIRST OBJECTION RELATING TO THE CURRENT SENTENCING DATE,
15 ORIGINALLY SENTENCING WAS SET FOR SEPTEMBER 16, AND IT IS
16 NOTED THIS IS NOVEMBER 18. AND I DON'T KNOW THAT IS
17 PARTICULARLY MATERIAL, BUT I DO NOTE THAT.

18 THE NEXT OBJECTION RELATES TO PAGE 3 OF THE P.S.R.
19 UNDER HEADING CURRENT ADDRESS, THERE IS A CORRECTION THERE. I
20 WOULD NOTE THAT AND HAVE THAT CLARIFIED.

21 WITH RESPECT TO THE OBJECTIONS, THEN, TO THE
22 PARAGRAPHS 3 THROUGH 56, I UNDERSTAND WHAT THE ARGUMENTS ARE.
23 THERE IS A GENERAL OBJECTION TO THE CHARACTERIZATION OF
24 OFFENSE CONDUCT, AND I WOULD IDENTIFY THOSE AS ARGUMENTS AND
25 CHARACTERIZATIONS. THEY ARE NOTED, BUT ALSO OVERRULED.

1 WITH RESPECT TO THE OBJECTION TO PARAGRAPH 4, NOW WE
2 GET INTO SOME SPECIFIC OBJECTIONS. THE OBJECTION IS
3 OVERRULED. IT MAY BE RELEVANT BUT IT IS NOT MATERIAL FOR ANY
4 SENTENCING CHOICE I AM GOING TO MAKE.

5 THE SPECIFIC OBJECTION WITH RESPECT TO PARAGRAPH 6
6 IS OVERRULED.

7 THE SPECIFIC OBJECTION TO PARAGRAPH 34 IS NOTED AND
8 CLARIFIED.

9 THE SPECIFIC OBJECTION TO PARAGRAPH 40 IS NOTED.

10 THE SPECIFIC OBJECTION TO PARAGRAPH 48, THE REQUEST
11 FOR CLARIFICATION IS NOTED.

12 WITH RESPECT TO THE SPECIFIC OBJECTION TO
13 PARAGRAPH 51, THAT CLARIFICATION IS NOTED.

14 WITH RESPECT TO THE 54TH PARAGRAPH OF THE P.S.R.,
15 THAT OBJECTION IS OVERRULED. MR. DOREH DID FACILITATE THE
16 TRANSFER OF FUNDS THROUGH SHIDAAL.

17 THE OBJECTION TO PARAGRAPH 55 IS ALSO NOTED AND
18 CLARIFIED.

19 WITH RESPECT TO THE GUIDELINE DISPUTES, I WANT TO
20 GET TO THOSE AS WELL, BUT I DO NOTE ONE THING. EVEN IN THE
21 ADDENDUM -- NOW I AM AT THE ADDENDUM PAGE 4, THE THIRD
22 PARAGRAPH UNDER GOVERNMENT'S GUIDELINE DISPUTES IT IS STATED:
23 BASED ON THE RESPONSE ABOVE, THE UNDERSIGNED IS IN AGREEMENT
24 WITH THIS OBJECTION. THE ADVISORY GUIDELINE RANGE BECOMES 80
25 YEARS CUSTODY, THE MAXIMUM OF ALL COUNTS, RUN CONSECUTIVELY

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1 PER 5G1.2 SUBDIVISION D.

2 THAT FIGURE IS NOT 80 YEARS, IT IS 65 YEARS. THOSE
3 COUNTS DON'T TOTAL 80 YEARS, SO THAT WAS ANOTHER CONTINUING
4 ISSUE WITH RESPECT TO THE GUIDELINES AS PROVIDED BY PROBATION.

5 SO BASICALLY, GETTING TO THE ANALYSIS ITSELF, THE
6 SUBJECT OF GROUPINGS COMES UP. AND I DON'T WANT TO UNDULY
7 BELABOR THIS, BUT AS WITH THE ANALYSES FOR MR. MOALIN AND
8 MR. MOHAMUD, WE DO NEED TO GROUP THESE THREE -- THESE FOUR
9 COUNTS OF CONVICTION.

10 AND, BY THE WAY, WE ARE DEALING, WITH MR. DOREH,
11 CONVICTIONS ON COUNTS 1, 2, 3 AND 5. THAT NEEDS TO BE
12 CLARIFIED: 1 BEING CONSPIRACY TO PROVIDE MATERIAL SUPPORT TO
13 FOREIGN TERRORISTS; 2, CONSPIRACY TO PROVIDE MATERIAL SUPPORT
14 FOR A FOREIGN TERRORIST ORGANIZATION; 3, MONEY LAUNDERING; AND
15 THEN 5, PROVIDING MATERIAL SUPPORT TO A FOREIGN TERRORIST
16 ORGANIZATION.

17 AS PREVIOUSLY STATED, ALL OF THESE COUNTS, IN MY
18 VIEW, SHOULD BE GROUPEd. AND THAT GROUPING SHOULD TAKE PLACE
19 PURSUANT TO 2S1.1, PARTICULARLY APPLICATION NOTE 8 -- EXCUSE
20 ME -- 6 AS IT WOULD APPLY IN THIS CASE, 2A1.5, 2X1.1 AND
21 ULTIMATELY UNDER 3D1.2, SUBDIVISION D, BECAUSE THE OFFENSES OF
22 CONVICTION WERE ONGOING AND CONTINUOUS IN NATURE. PUT ANOTHER
23 WAY, THEY WERE CLOSELY RELATED WITH A COMMON PURPOSE OF
24 SUPPORTING TERRORISM.

25 THE GUIDELINE CALCULATIONS FOR THESE GROUPEd COUNTS

1 WOULD BE THE BASE OFFENSE LEVEL OF 33, WITH A 12-LEVEL UPWARD
2 ADJUSTMENT UNDER 3A1.1. I SAID IT BEFORE, BUT IT BEARS
3 INDIVIDUAL REPEATING FOR MR. DOREH'S CASE, THAT BOTH
4 PARAGRAPHS A AND B OF 3A1.4 WOULD APPLY. THE 12-LEVEL UPWARD
5 ENHANCEMENT APPLIES IF THE OFFENSE OR OFFENSES INVOLVED WERE
6 INTENDED TO PROMOTE A FEDERAL CRIME OF TERRORISM. AND WITH
7 RESPECT TO CRIMINAL HISTORY CATEGORY, IT IS ELEVATED FROM A
8 LEVEL I TO A LEVEL VI UNDER SUBDIVISION B OF THAT SECTION.

9 I INDICATED PREVIOUSLY, AND WOULD ONCE AGAIN
10 CONFIRM, THAT IN MY VIEW, AND BEYOND A REASONABLE DOUBT, THE
11 EVIDENCE DEMONSTRATED THAT THESE OFFENSES WERE CALCULATED TO
12 INFLUENCE OR AFFECT GOVERNMENTAL ACTION THROUGH INTIMIDATION,
13 COERCION, VIOLENCE. AL-SHABAAB BEING A BRUTAL TERRORIST
14 ORGANIZATION THAT ENGAGED IN BOMBINGS, ASSASSINATIONS, SUICIDE
15 BOMBINGS, BOMBINGS OF THE PRESIDENTIAL PALACE, AMBUSHES, USING
16 EXPLOSIVE DEVICES AND FIREARMS OF ALL KINDS IN A CAMPAIGN TO
17 TERRORIZE AND ULTIMATELY AFFECT THE TRANSITIONAL FEDERAL
18 GOVERNMENT OF SOMALIA, INCLUDING ASSOCIATED FORCES FROM
19 ETHIOPIA AND AFRICAN UNION MEMBERS. IT MAY NOT HAVE BEEN MUCH
20 OF A FUNCTIONING GOVERNMENT AT THE TIME BUT IT WAS FUNCTIONING
21 PURSUANT TO THE SUPPORT OF THE SURROUNDING GOVERNMENTS AND A
22 UNITED GOVERNMENTAL EFFORT TO BRING LAW AND ORDER TO SOMALIA.

23 I DID MENTION SUICIDE BOMBINGS. I DON'T RECALL,
24 QUITE FRANKLY, NOW, WHETHER THERE WERE SUICIDE BOMBINGS AT
25 THAT PARTICULAR POINT IN TIME. I KNOW THE GOVERNMENT'S EXPERT

1 IN GENERAL MADE REFERENCE TO SUICIDE BOMBINGS BUT I DO NOT
2 KNOW AT THE TIME -- I CANNOT RECALL AT THE TIME THESE OFFENSES
3 WERE BEING COMMITTED WHETHER AL-SHABAAB WAS ACTIVE IN SUICIDE
4 BOMBINGS. BUT THAT DOESN'T TAKE AWAY FROM THE APPLICATION OF
5 3A1.4.

6 I KNOW THE GOVERNMENT HAS REALLY DETAILED THE
7 EFFORTS AND THE TACTICS UTILIZED BY AL-SHABAAB IN THEIR
8 SENTENCING MEMORANDUM. I THINK THE GOVERNMENT DID A VERY GOOD
9 JOB WITH THAT AT PAGES 9 AND 10. I WOULD CERTAINLY ADOPT AS A
10 SUMMARY WHAT THE GOVERNMENT HAS SET FORTH IN ITS SENTENCING
11 MEMORANDUM AT THAT PARTICULAR POINT.

12 SO THE TOTAL OFFENSE LEVEL BEFORE CONSIDERATION OF
13 5G1.1 AND 5G1.2 WOULD BE 43, AND THE CRIMINAL HISTORY CATEGORY
14 WOULD BE A VI FOR THESE OFFENSES OF CONVICTION, GROUPED.

15 AND NOW WE LOOK AT 5G1.1 AND 5G1.2, SUBDIVISION D.
16 AND WE LOOK AT THE INTERPLAY BETWEEN THESE SECTIONS, THE
17 DEFINITION OF TOTAL PUNISHMENT. I INCORPORATE WITH THE
18 AGREEMENT OF ALL COUNSEL MY REMARKS EARLIER TODAY,
19 PARTICULARLY WITHIN THE CONTEXT OF THE SENTENCING FOR
20 MR. MOALIN, ON HOW THESE SECTIONS RELATE TO ONE ANOTHER AND
21 THE DEFINITION OF TOTAL PUNISHMENT. BUT, IN ANY EVENT, THE
22 ADVISORY GUIDELINE RANGE FOR THESE PARTICULAR COUNTS OF
23 CONVICTION BECOME THE STATUTORY MAXIMUMS. AND FOR COUNTS 1
24 AND 2 AND 5 THEY WOULD EACH BE 15 YEARS. FOR COUNT 3, THE
25 MONEY LAUNDERING COUNT, THE MAXIMUM WOULD BE 20 YEARS.

1 AGAIN, THE FIGURE OF 65 YEARS, IN MY VIEW, IS NOT AN
2 ADVISORY GUIDELINE RANGE, PER SE, THAT IS WITHIN THE MEANING
3 OF CHAPTER 5 AND SPECIFICALLY 5G1.1 AND 2. 65 YEARS
4 REPRESENTS, AGAIN, A MECHANICAL STACKING OF ALL COUNTS OF
5 CONVICTION AND CONSECUTIVELY TO THE MAX. I DON'T THINK THAT
6 WOULD BE APPROPRIATE IN THIS CASE.

7 BEFORE WE CONCLUDE WITH THE GUIDELINE ANALYSIS WE
8 GET TO ANY FORMAL DEPARTURE REQUESTS. AND THE DEPARTURE
9 REQUESTS MADE BY MR. DOREH, AS I INTERPRET IT, THE PAPERS YOU
10 SUBMITTED, MR. GAPPOUR, REALLY RELATED TO THE ISSUE OF ROLE.
11 YOU WERE ARGUING FOR WHAT YOU CALLED A MITIGATED ROLE
12 DEPARTURE. UNDER THE GUIDELINES REDUCTIONS FOR ROLE, MINOR OR
13 MINIMAL, ARE ADJUSTMENTS RATHER THAN DEPARTURES.

14 AND I DON'T KNOW -- I DON'T KNOW, GIVEN MY PREVIOUS
15 ANALYSIS RELATING TO STATUTORY MAXIMUMS, HOW THE GUIDELINES
16 WORK TO THIS POINT, WHETHER YOU ARE REALLY MAKING A REQUEST
17 FROM THE STATUTORY MAXIMUMS FOR THIS -- FOR THESE OFFENSES ON
18 THE BASIS OF A DEPARTURE FOR ROLE, OR WHETHER YOU ARE MAKING A
19 REQUEST FOR A MITIGATED SENTENCE TAKING INTO ACCOUNT AS ONE OF
20 THE EQUITABLE CONSIDERATIONS WHAT YOU CHARACTERIZE AS A MINOR
21 ROLE OR A MITIGATED ROLE.

22 **MR. GHAPPOUR:** BOTH, YOUR HONOR, ONE AS THE
23 ALTERNATIVE OF THE OTHER. IN OTHER WORDS, IF YOU WOULD NOT
24 FIND THE DEPARTURE THEN I WOULD ASK --

25 **THE COURT:** HOW MANY LEVELS, THEN, WOULD YOU BE

1 REQUESTING? THERE WASN'T ANY -- THERE WASN'T ANY QUANTITATIVE
2 SUBMISSION BY YOU IN THAT REGARD, SO WHAT WOULD THAT BE?

3 **MR. GHAPPOUR:** I THINK IN MY OBJECTIONS TO THE
4 P.S.R. I ASKED FOR FOUR POINTS DOWNWARD DEPARTURE.

5 **THE COURT:** A FOUR-LEVEL DOWNWARD REDUCTION. LET'S
6 CALL IT A REDUCTION.

7 WOULD THAT COME FROM THE TOTAL OF THE STACKED
8 OFFENSES CONSECUTIVELY? WOULD IT COME FROM STATUTORY MAXIMUMS
9 CONCURRENTLY? WHAT WOULD BE THE STARTING POINT FOR THAT?

10 **MR. GHAPPOUR:** QUITE FRANKLY, WHATEVER GETS MY
11 CLIENT THE LESSER SENTENCE. FORGIVE ME, MY UNDERSTANDING --
12 AND I WILL RAISE THIS OBJECTION TO THE EXTENT THE ENHANCEMENTS
13 ARE APPLIED, AN INDIVIDUALIZED FINDING OF THE 3A1.4
14 ENHANCEMENT HAS TO APPLY; IN OTHER WORDS, THERE IS MATERIAL
15 SUPPORT OF THE TERRORIST GROUP. INHERENTLY ALL TERRORIST
16 GROUPS ARE HORRIBLE AND SEEK TO COERCE A GOVERNMENT OR APPLY
17 SOME SORT OF POLITICAL END. BUT THE PURPOSE OF THE
18 ENHANCEMENT, THEN, IS TO LOOK AT THE INTENT OF THE INDIVIDUAL
19 AND SEE IF HIS ACTIONS -- IF THERE WAS PROOF DURING TRIAL THAT
20 HIS ACTIONS CONSTITUTED THE FORMATION OF AN INTENT TO COERCE
21 THE GOVERNMENT.

22 I APOLOGIZE, I THOUGHT THIS WAS IN A FOOTNOTE. BUT
23 MY CALCULATIONS WERE NOT APPLYING ENHANCEMENT, 20 YEAR MAX, I
24 GUESS, PUT US AT 33, THEN THE FOUR-LEVEL REDUCTION.

25 **THE COURT:** I THINK WE ARE LOSING GROUND HERE.

1 **MR. GHAPPOUR:** I AM JUST TRYING TO EXPLAIN MYSELF,
2 YOUR HONOR. I APOLOGIZE.

3 **THE COURT:** I WAS ASKING YOU TO FOCUS ON THE ROLE
4 DEPARTURE. YOU BASICALLY INCORPORATED THE ARGUMENTS OF YOUR
5 CO-DEFENDANTS WHEN IT CAME TO THE 3A1.4 UPWARD 12-LEVEL
6 ENHANCEMENT. AND BASICALLY THE ARGUMENT, OR ARGUMENTS, OF
7 YOUR CO-DEFENDANTS WERE -- AND I THINK PROBABLY BEST AMPLIFIED
8 BY OR IN THE SENTENCING MEMORANDUM FOR MR. MOALIN -- THIS
9 WASN'T A FUNCTIONING GOVERNMENT. AND BECAUSE IT WASN'T A
10 FUNCTIONING GOVERNMENT THE ACTIVITY COULDN'T HAVE BEEN
11 DIRECTED TO DETER, DEFEAT, INTIMIDATE OR COERCE A FUNCTIONING
12 GOVERNMENT. THAT WAS THE ARGUMENT. NOT THAT THERE WASN'T AN
13 INDIVIDUALIZED FINDING OF ACTION OR INTENT ON THE PART OF
14 INDIVIDUAL DEFENDANTS. I DON'T BELIEVE THAT IS THE TEST, AND
15 NO ONE HAS CITED ANY AUTHORITY FOR THAT.

16 **MR. GHAPPOUR:** FORGIVE ME, YOUR HONOR, BUT I GUESS
17 IT WOULD -- IN MY EYES, IT WOULD RENDER THE ENHANCEMENT
18 MEANINGLESS IF THERE IS NO INDIVIDUALIZED FINDING AND IF THE
19 ENHANCEMENT APPLIES JUST FOR THE CONDUCT, OR MORE SPECIFICALLY
20 TO THE STATUTE, THEN EVERY CONVICTION -- EVERY CONVICTION FOR
21 2339(A) OR (B) WOULD NECESSARILY RESULT IN AN ENHANCEMENT
22 BECAUSE ALL FOREIGN TERRORIST ORGANIZATIONS.

23 **THE COURT:** WELL, THE JURY MADE THE NECESSARY
24 FINDINGS IN THIS CASE, MR. GHAPPOUR.

25 **MR. GHAPPOUR:** I AGREE.

1 **THE COURT:** I KNOW YOU AGREE WITH THAT, YOU STATED
2 YOU AGREE. AND THEN YOU HAVE THE COMPLICIT NATURE OF WHAT WAS
3 INVOLVED IN THIS CASE BY THE DIFFERENT DEFENDANTS, AND SO IN A
4 SENSE THEY ARE CHARGED WITH THAT -- WITH THAT ACTIVITY, EACH
5 AND EVERY ONE OF THEM. CLEARLY THERE WAS THE INTENT ON THE
6 PART OF ALL DEFENDANTS, AS FOUND BY THE JURY, TO PROMOTE
7 INDIVIDUALLY, TO INTEND TO HAVE THESE FUNDS SUPPORT A CRIME OF
8 TERRORISM, SUCH AS IT IS DEFINED.

9 AND I WILL BE HAPPY TO GO THROUGH IT FOR YOU ONCE
10 AGAIN IF YOU WOULD LIKE ME TO, BUT IT IS DEFINED BASICALLY AS
11 ACTIVITY THAT IS INTENDED TO INFLUENCE, INTIMIDATE, COERCE A
12 FEDERAL GOVERNMENT. AND THAT'S -- THAT WAS FOUND BY VIRTUE OF
13 THE VERDICTS IN THIS CASE AND HOW THE EVIDENCE WAS PRESENTED
14 TO THE JURY AND WHAT THEIR SPECIFIC FINDINGS WERE, THE
15 PREDICATES FOR THEIR VERDICTS.

16 SO I THINK WE HAVE REALLY BACKED UP QUITE A BIT. I
17 WANTED TO EXPLORE WHAT YOUR -- AND FURTHERMORE, I WOULD ASSUME
18 YOU WOULD AGREE A GUIDELINE ANALYSIS IS RATHER IRRELEVANT
19 HERE. WE ARE TALKING ABOUT SENTENCING UNDER 3553(A). THE
20 GUIDELINES ARE VERY UNHELPFUL. THE STATUTORY MAXIMUMS BECOME,
21 ULTIMATELY, THE STARTING POINT, IN MY VIEW, FOR FURTHER
22 ANALYSIS. IF YOU DISAGREE WITH THAT, LET ME KNOW NOW.

23 **MR. GHAPPOUR:** I AGREE. AND I, IN THAT CASE, WOULD
24 LIKE TO APPLY MY ANALYSIS TO THE OTHER FACTORS.

25 **THE COURT:** AS A MITIGATING FACTOR UNDER, WHAT, A

1 3553(A) ANALYSIS?

2 **MR. GHAPPOUR:** YES, YOUR HONOR.

3 **THE COURT:** I AM JUST LOOKING FOR A LITTLE HELP AT
4 THIS POINT FROM YOU.

5 **MR. GHAPPOUR:** YES, YOUR HONOR.

6 **THE COURT:** BECAUSE THE WAY THE ROLE -- THE
7 MITIGATED ROLE WAS REQUESTED IT WAS UNCLEAR TO ME AS TO HOW
8 THAT WAS TO BE APPLIED; WAS IT TO BE APPLIED WITHIN A
9 GUIDELINE ANALYSIS, WAS IT TO BE APPLIED WITHIN A 3553(A)
10 ANALYSIS, AND WHAT THE QUANTITATIVE VALUE OF THAT WOULD BE.

11 **MR. GHAPPOUR:** 3553(A), YOUR HONOR.

12 **THE COURT:** ALL RIGHT. ALL RIGHT.

13 AS I SAID BEFORE, THE MOST SIGNIFICANT ISSUE HERE IS
14 WHETHER THE SENTENCING DECISION WILL BE DRIVEN BY CONCURRENT
15 SENTENCES ON THESE COUNTS OF CONVICTION, OBVIOUSLY COMBINED
16 WITH THE 3553(A) ANALYSIS. SO LET ME JUST BUTTON UP THE
17 GUIDELINE ANALYSIS BEFORE GETTING TO 3553(A).

18 THE GUIDELINE RANGES, UNDER THE ADVISORY GUIDELINES,
19 WOULD BE THE STATUTORY MAXIMUMS FOR EACH OF THE OFFENSES OF
20 CONVICTION.

21 WITH RESPECT TO THE NATURE AND CIRCUMSTANCES OF THE
22 OFFENSES, I SAID IT BEFORE, I WILL SAY IT AGAIN. IN MY VIEW
23 THESE OFFENSES WERE VERY SERIOUS. PROVIDING SUPPORT FOR A
24 BRUTAL TERRORIST ORGANIZATION WITH TARGETED VIOLENCE,
25 ASSASSINATIONS BOMBINGS AND OTHER TYPES OF ACTIVITY, ALL TO

1 DISRUPT, DETER, DEFEAT, ULTIMATELY, THE TRANSITIONAL FEDERAL
2 GOVERNMENT, THE AFRICAN UNION FORCES AND OTHER ASSOCIATED
3 EFFORTS TO BRING WAR-TORN SOMALIA SOME SEMBLANCE OF ORDER AND
4 PEACE.

5 DEFENDANT DOREH HELPED IMPLEMENT THE TRANSMISSION OF
6 FUNDS THROUGH THE SHIDAAL EXPRESS FOR THE PURPOSE OF ADVANCING
7 THESE PURPOSES. THAT HE WAS NOT THE OWNER OF SHIDAAL EXPRESS
8 AT THE MOMENT HE ASSISTED IN THE TRANSMISSIONS, IN MY VIEW, IS
9 OF NO MOMENT. HE ASSISTED IN THE TRANSMISSION OF THOSE FUNDS.
10 HE KEPT MR. MOALIN ADVISED OF THE ROUTING. HE WAS CLEARLY
11 AWARE OF WHAT THE FUNDS WERE BEING PROVIDED FOR, THROUGH THESE
12 STRUCTURED TRANSACTIONS, USING CODED TERMS AND DIFFERENT NAMES
13 AND ALL OF THE EFFORTS UNDERTAKEN TO MASK SOME OF THE ACTUAL
14 DETAILS OF THESE TRANSMISSIONS.

15 THAT BEING SAID, I THINK THE ROLE OF MR. DOREH WAS
16 LESSER THAN THE ROLES -- THIS IS WHERE THE MITIGATED NATURE OF
17 ROLE COMES IN.

18 I DO NOT ACCEPT THE PROPOSITION FROM THE GOVERNMENT,
19 WITH DUE RESPECT TO MS. HAN, THAT MR. DOREH'S ROLE WAS
20 COMPARABLE TO MR. MOALIN'S OR MR. MOHAMUD'S. HIS ROLE WAS
21 LESSER THAN THE ROLES PLAYED BY THOSE TWO GENTLEMEN. HE WAS
22 NOT INVOLVED IN THE RECRUITING OF FINANCIAL SUPPORT AS HIS
23 CO-DEFENDANTS WERE, NOR WAS HE A COG IN THE WHEEL OF SUPPORT
24 AS MR. MOALIN WAS. AND I THINK THAT THE MITIGATED NATURE OF
25 MR. DOREH'S PARTICIPATION IS AN EQUITABLE CONSIDERATION THAT

1 CAN BE ADDRESSED AND APPLIED UNDER 3553(A) .

2 WITH RESPECT ON THE HISTORY AND CHARACTERISTICS OF
3 MR. DOREH. ONCE AGAIN THAT IS WHERE WE FIND MOST OF THE
4 EQUITIES HERE. AGAIN, WE ARE DEALING WITH A HIGHLY EDUCATED
5 MAN, A MAN OF 56, HAVING LEFT WAR-TORN SOMALIA FOR REASONS
6 THAT ARE PERFECTLY UNDERSTANDABLE. MULTIPLE COLLEGE DEGREES,
7 VARIOUS EMPLOYMENT CAPACITIES, AND BASICALLY A HISTORY OF
8 PRODUCTIVE EMPLOYMENT. AND A LAW ABIDING HISTORY, WITH THE
9 EXCEPTION OF WHAT WAS DONE IN THIS CASE.

10 SOMEONE WHO APPARENTLY WAS AN UPSTANDING MEMBER OF
11 THE SOMALI COMMUNITY, AS I READ THROUGH ALL OF THE LETTERS.
12 AND I AM AWARE OF THE FOUNDATIONS WITH WHICH MR. DOREH HAS
13 ASSOCIATED HIMSELF. AND OF PARTICULAR NOTE TO ME WAS HIS
14 INVOLVEMENT WITH PROVIDING SPIRITUAL GUIDANCE FOR INDIVIDUALS
15 IN CUSTODY. I THINK THAT IS A LAUDATORY CREDENTIAL AND IS
16 CERTAINLY SOMETHING THAT I THINK IS QUITE DESERVING OF
17 CONSIDERATION HERE. YOU KNOW, MR. DOREH BEING A BIT OLDER
18 THAN HIS CO-DEFENDANTS AND HAVING 11 CHILDREN -- OR EIGHT.

19 **MR. GHAPPOUR:** EIGHT.

20 **THE COURT:** EIGHT CHILDREN, HAVING EIGHT CHILDREN.
21 THEY SPAN A SPECTRUM OF AGES, AND SO IT COMES AS NO SURPRISE
22 TO ME THAT MR. DOREH HAS A LARGE FAMILY WITH CHILDREN AT ALL
23 DIFFERENT LEVELS OF EDUCATION AND ACHIEVING HIGHLY AS THEY
24 ARE.

25 AND I DO NOTE THAT MR. DOREH IS A NATURALIZED

1 CITIZEN. HE DOESN'T HAVE COLLATERAL CONSEQUENCES IN THAT
2 REGARD AS MR. MOHAMUD HAS IN THIS CASE.

3 OBVIOUSLY, THE SENTENCING PURPOSES THAT I ENUMERATED
4 EARLIER, PROMOTING RESPECT FOR U.S. LAWS THAT PROSCRIBE
5 TERRORISM IN ALL FORMS BUT ESSENTIALLY PROSCRIBE TERRORISM IN
6 THE FORM OF AIDING, PROMOTING FOREIGN TERRORISTS AND FOREIGN
7 TERRORIST ORGANIZATIONS, MUST BE BUTTRESSED IN A CASE LIKE
8 THIS. AND PROTECTING THE PUBLIC FROM FURTHER CRIMES OF THIS
9 TYPE IS, OBVIOUSLY, VERY IMPORTANT. DETERRENCE IS PROBABLY
10 THE GREATEST OF ALL OF THESE ASSOCIATED SENTENCING PURPOSES AT
11 THIS POINT. THEY ARE ALL RELATED, BUT DETERRENCE IS SO
12 IMPORTANT.

13 OBVIOUSLY, WHEN IT COMES TO SPECIFIC DETERRENCE I
14 DON'T THINK WE NEED WORRY ABOUT ANY OF THESE THREE GENTLEMEN.
15 BUT WHEN IT COMES TO GENERAL DETERRENCE THOSE WHO WOULD THINK
16 THE SUPPORT FOREIGN TERRORISTS AND FOREIGN TERRORIST
17 ORGANIZATIONS, DESIGNATED AS SUCH BY THE SECRETARY OF STATE BY
18 THE UNITED STATES GOVERNMENT, MUST BE DETERRED FROM THIS KIND
19 OF ACTIVITY.

20 THERE IS NO ALTERNATIVE TO CUSTODY, IN MY VIEW, IN A
21 CASE SUCH AS THIS THAT WOULD VALIDATE, BUTTRESS THE MOST
22 RELEVANT SENTENCING PURPOSES I HAVE BEEN DISCUSSING. AND I AM
23 MINDFUL THAT A CUSTODIAL SENTENCE MUST BE FAIR, JUST AND
24 REASONABLE, AND BE SUFFICIENT BUT THE LEAST AMOUNT OF TIME
25 THAT WOULD BE NECESSARY TO SERVE THE SENTENCING PURPOSES THAT

1 I HAVE REFERRED TO.

2 FOR ALL OF THESE REASONS I WOULD FIND THAT A TERM OF
3 CUSTODY OF 10 YEARS FOR EACH OF THESE COUNTS, IMPOSED
4 CONCURRENTLY TO ONE ANOTHER FOR A TOTAL OF 10 YEARS, WOULD BE
5 A FAIR, JUST AND REASONABLE SENTENCE AND SERVE, IN MY MIND,
6 THE SENTENCING PURPOSES AS I HAVE OUTLINED THEM.

7 I REALIZE THAT A 10-YEAR SENTENCE, IN TOTAL, FOR
8 THESE COUNTS OF CONVICTION REPRESENTS A SIGNIFICANT VARIANCE
9 FROM THE STATUTORY MAXIMUMS OF EITHER 15 OR 20 YEARS ON THESE
10 COUNTS OF CONVICTION. BUT I THINK -- I THINK IT IS WARRANTED,
11 THE OVERALL VARIANCE IS WARRANTED.

12 ULTIMATELY, THESE CUSTODIAL SENTENCES FOR THESE
13 COUNTS SHOULD BE IMPOSED CONCURRENTLY, AS I SAID BEFORE, AND I
14 WILL REPEAT FOR MR. DOREH. BECAUSE THE COUNTS REPRESENT
15 RELATED OFFENSES THEY HAVE BEEN GROUPED. THEY CONSIST OF THE
16 SAME CONTINUING HARM FOR THE SAME COMMON PURPOSE OF ULTIMATELY
17 PROVIDING SUPPORT, FINANCIAL SUPPORT, TO FOREIGN TERRORISTS
18 AND A FOREIGN TERRORIST ORGANIZATION.

19 ACCORDINGLY, PURSUANT TO THE 1984 SENTENCING REFORM
20 ACT, IT IS THE JUDGMENT AND SENTENCE OF THE COURT THAT MR.
21 DOREH BE, AND HEREBY IS, COMMITTED TO THE CUSTODY OF THE
22 BUREAU OF PRISONS ON EACH OF THE COUNTS OF CONVICTION, COUNTS
23 1, 2, 3 AND 5, FOR A PERIOD OF 10 YEARS CUSTODY ON EACH OF
24 THOSE COUNTS, EACH CONCURRENT WITH THE OTHER, FOR A TOTAL OF
25 10 YEARS OF CUSTODY.

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1 NO FINE IS IMPOSED IN CONNECTION WITH ANY OF THESE
2 COUNTS. A \$100 SPECIAL ASSESSMENT IS ASSESSED WITH RESPECT TO
3 COUNT 1 AND WAIVED WITH RESPECT TO THE REMAINING COUNTS.

4 FOLLOWING COMPLETION OF THE CUSTODIAL SENTENCE IN
5 THIS CASE, MR. DOREH IS TO BE PLACED UPON A THREE-YEAR PERIOD
6 OF SUPERVISED RELEASE, WITH THE STANDARD CONDITIONS OF
7 SUPERVISION APPLYING AS WELL AS THE FOLLOWING SPECIAL
8 CONDITIONS: THAT HE SUBMIT TO A SEARCH OF HIS PERSON,
9 PROPERTY, VEHICLE, ABODE OR RESIDENCE AT A REASONABLE TIME,
10 UNDER REASONABLE CIRCUMSTANCES BY A PROBATION OFFICER BASED ON
11 REASONABLE SUSPICION.

12 MR. DOREH, I WOULD ORDER THAT YOU ADVISE THE OTHER
13 RESIDENTS OF THE PREMISES THAT THE PREMISES ARE SUBJECT TO
14 SEARCH PURSUANT TO THIS CONDITION.

15 THAT YOU REPORT ALL VEHICLES, OWNED OR OPERATED, OR
16 IN WHICH YOU HAVE AN INTEREST TO PROBATION; THAT YOU NOT
17 KNOWINGLY ASSOCIATE WITH FOREIGN TERRORISTS OR -- WITH FOREIGN
18 TERRORISTS, TERRORISTS OR TERRORIST ORGANIZATIONS, WHETHER
19 THEY BE FOREIGN OR DOMESTIC; AND THAT YOU PROVIDE COMPLETE
20 DISCLOSURE OF PERSONAL AND BUSINESS FINANCIAL RECORDS TO
21 PROBATION AS REQUESTED.

22 SIR, DO YOU UNDERSTAND THESE CONDITIONS OF
23 SUPERVISED RELEASE, THESE SPECIAL CONDITIONS, AS I HAVE
24 OUTLINED THEM, MR. DOREH?

25 **DEFENDANT DOREH:** YES, YOUR HONOR.

1 **THE COURT:** DO YOU HAVE ANY QUESTIONS ABOUT ANY OF
2 THEM?

3 **DEFENDANT DOREH:** NO, YOUR HONOR.

4 **THE COURT:** I WOULD FURTHER ADVISE YOU THAT YOU HAVE
5 AN ABSOLUTE RIGHT TO APPEAL FROM THE CONVICTIONS ON THESE
6 COUNTS, AND FOR THE SENTENCE IMPOSED FOR THEM. IF YOU DO WISH
7 TO APPEAL -- I KNOW THAT YOU DO -- YOU MUST FILE A WRITTEN
8 NOTICE OF APPEAL WITHIN 14 DAYS FROM TODAY WITH THE CLERK OF
9 THIS COURT RATHER THAN WITH THE CLERK OF THE NINTH CIRCUIT
10 COURT OF APPEALS. YOU MUST SPECIFY WHAT IT IS YOU ARE
11 APPEALING FROM. YOU MUST KEEP THE APPELLATE AUTHORITIES
12 ADVISED OF YOUR WHEREABOUTS AT ALL TIMES WHILE YOUR CASE IS ON
13 APPEAL SO THAT IF THEY DO NEED TO CONTACT YOU THEY CAN CONTACT
14 YOU.

15 IF YOU CANNOT AFFORD THE SERVICES OF LEGAL
16 REPRESENTATION WHILE YOUR CASE IS ON APPEAL, THOSE SERVICES
17 WILL BE PROVIDED TO YOU AT NO COST TO YOU.

18 DO YOU UNDERSTAND WHAT I HAVE TOLD YOU ABOUT YOUR
19 APPELLATE RIGHTS, MR. DOREH?

20 **DEFENDANT DOREH:** YES, YOUR HONOR.

21 **THE COURT:** I AM GOING TO RECOMMEND THE WESTERN
22 REGION FOR MR. DOREH'S PLACEMENT, AND AS CLOSE TO THE SOUTHERN
23 DISTRICT OF CALIFORNIA AS PRACTICABLE.

24 DID YOU HAVE ANY QUESTIONS, MR. GHAPPOUR, AT THIS
25 POINT?

1 **MR. GHAPPOUR:** NO, YOUR HONOR.

2 **THE COURT:** IF YOU COME FORWARD, I WOULD LIKE TO
3 HAVE YOU PROVIDED WITH A COPY OF THE TERMS AND CONDITIONS OF
4 SUPERVISED RELEASE, WHICH I AM GOING TO HAVE HANDED TO YOU. I
5 WOULD LIKE YOU TO PROVIDE THOSE TO YOUR CLIENT AT THIS TIME.
6 THAT IS APPRECIATED.

7 MS. HAN, MR. COLE, ANYTHING FURTHER FROM THE
8 GOVERNMENT WITH RESPECT TO MR. DOREH, ANY OBJECTIONS?

9 **MS. HAN:** YOUR HONOR, JUST ON THE PROCEDURAL ISSUE
10 WITH REGARD TO YOUR CALCULATION AND THE IMPLICATION OF 5G1.1
11 AND 1.2. WE JUST HAVE AN OBJECTION FOR MR. DOREH AS WELL AS
12 MR. MOHAMUD, WHICH WE NOTED EARLIER.

13 **THE COURT:** WOULD YOU LIKE TO STATE WHAT THE
14 OBJECTION IS?

15 **MS. HAN:** WE BELIEVE THAT -- JUST UNDER OUR READING
16 OF THE GUIDELINES WE BELIEVE THAT THE ACTUAL GUIDELINE RANGE
17 IS WHAT WE STATED, WHICH WAS 780 MONTHS TO 780 MONTHS FOR MR.
18 DOREH AND MR. MOHAMUD, AND 960 MONTHS FOR MR. MOALIN -- 960 TO
19 960 MONTHS FOR MR. MOALIN.

20 **MR. COLE:** JUST STATED FOR THE RECORD.

21 **THE COURT:** YES. YOU KNOW, THAT COULD CONCEIVABLY
22 BE. I MEAN, HERE WE ARE MORE OR LESS SHOOTING OFF THE TOP
23 HERE. WHAT THAT COULD CONCEIVABLY REPRESENT WOULD BE TOTAL
24 PUNISHMENT. TOTAL PUNISHMENT COULD BE 65 YEARS OR 80 YEARS IN
25 THE CASE OF ONE DEFENDANT OR ANOTHER. THE COURT COULD DO

1 THAT, CONSEC'ING ALL OF THESE COUNTS OF CONVICTION, THAT IS
2 TOTAL PUNISHMENT. THAT IS NOT THE ADJUSTED COMBINED GUIDELINE
3 RANGE, IN MY VIEW. THE GUIDELINE RANGES FOR THE VARIOUS
4 COUNTS OF CONVICTION ARE THE STATUTORY CAPS BECAUSE EVEN
5 THOUGH 5G1.1 TALKS ABOUT A SINGULAR COUNT, AS MR. COLE POINTED
6 OUT, WHERE THE GUIDELINE RANGE EXCEEDS THE STATUTORY MAXIMUM
7 FOR THAT COUNT, THE GUIDELINE RANGE IS THE STATUTORY MAXIMUM.
8 IT CAN BE NO GREATER THAN THE STATUTORY MAXIMUM. THEN WHEN
9 YOU ARE DEALING WITH MULTIPLE COUNTS, THAT'S WHEN YOU ARE
10 DEALING WITH A DYNAMIC OF WHETHER YOU RUN THE COUNTS
11 CONSECUTIVELY OR CONCURRENTLY. THAT IS WHEN THE QUESTION OF
12 TOTAL PUNISHMENT COMES IN. YOU HAVE TO FIGURE OUT WHAT TOTAL
13 PUNISHMENT IS IF IT IS GOING TO BE MORE THAN THE HIGHEST
14 STATUTORY MAXIMUM FOR ANY OF THE COUNTS OF CONVICTION SO THAT
15 YOU CAN STRUCTURE IT SUCH THAT YOU DON'T IMPOSE MORE THAN THE
16 STATUTORY MAXIMUM ON THE HIGHEST COUNT BEFORE CONSEC'ING
17 PORTIONS OF OTHER COUNTS FOR THE TOTAL PUNISHMENT. I THINK
18 THAT WAS THE ONLY POINT I WAS TRYING TO MAKE.

19 I HAVE A FEELING THAT THE DIFFERENCE -- THE
20 OBJECTION THAT YOU ARE MAKING IS ONE OF LEXICON MORE THAN
21 ANYTHING ELSE AS IT RESULTS -- AS IT AFFECTS SOME OF THESE
22 TERMS. BUT, LOOK, THAT IS THE BEST READING I COULD GIVE IT.
23 I KNOW THAT IT GETS A LITTLE BIT TECHNICAL AND A LITTLE BIT
24 CHALLENGING, BUT AS I SPENT LITERALLY HOURS PORING OVER THIS
25 STUFF, THAT IS ABOUT THE BEST I COULD MAKE OF IT. AND THEN

1 LOOKING AT THAT HYPOTHETICAL IN THE APPLICATION NOTE WAS OF
2 ASSISTANCE TOO. ULTIMATELY, GIVEN THE DISPOSITIONS IN THIS
3 CASE, I THINK THAT THESE POINTS ARE SOMEWHAT MOOT.

4 IF THERE IS NOTHING ELSE, THEN WE WILL ADJOURN IN
5 THIS MATTER.

6 **MR. COLE:** THANK YOU, YOUR HONOR.

7 **MR. DRATEL:** THANK YOU.

8
9 * * *

10 I CERTIFY THAT THE FOREGOING IS A CORRECT
11 TRANSCRIPT FROM THE RECORD OF PROCEEDINGS
IN THE ABOVE-ENTITLED MATTER.

12 S/LEEANN PENCE

2/3/2014

13 LEEANN PENCE, OFFICIAL COURT REPORTER DATE
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